SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Rajesh Kumar Vs. The Central Bureau of Investigation a C B Through Superintendent of Police Ranchi

Rajesh Kumar Vs. The Central Bureau of Investigation a C B Through Superintendent of Police Ranchi

SooperKanoon Citation : sooperkanoon.com/110378

Court : Jharkhand

Decided On : Jun-29-2017

Appellant : Rajesh Kumar

Respondent : The Central Bureau of Investigation a C B Through Superintendent of Police Ranchi

Judgement :

1 IN THE HIGH COURT OF JHARKHAND AT RANCHI A.B. A. No. 1098 of 2017 Rajesh Kumar Petitioner Versus C.B.I (A.C.B.) through Superintendent of Police, Ranchi Opposite Party with A.B. A. No. 1116 of 2017 Sadanand Gupta Petitioner Versus C.B.I (A.C.B.) through Superintendent of Police, Ranchi Opposite Party CORAM: HON'BLE MR. JUSTICE ANANT BIJAY SINGH For the Petitioners: Mr. Abhishek Sinha, Advocate Mr. Kumar Harsh, Advocate For the C.B.I : Mr. Kailash Prasad Deo, Advocate C.A.V. On: 21/06/2017 Pronounced on: 29/06/2017 Since both the anticipatory bail applications arise out of one and the same case hence they are taken up together and disposed of by common order. The petitioners are apprehending their arrest in connection with R.C 11(A)/2014R for the offence registered under sections 120B, 420, 468 and 471 of the Indian Penal Code and under section 13(2) read with Section 13(1(d) of the Prevention of Corruption Act, 1988 pending in the court of Shri B.K. Tiwary, Special Judge, C.B. I(A.C.B), Ranchi. The case of prospection, in short, is that one S.K. Khare, Superintendent

of Police/HOB, C.B.I, AC.B, Ranchi got information from reliable source that one Shri Darlando Thanmi Khathing, the then Vice Chancellor, Central University of Jharkhand (CUJ), Ranchi Jharkhand, Narendra Lal Garg, OSD (Project, Central University of Jharkhand, Ranchi, Sanjay Kumar Singh, the then Civil Engineer, Central University of Jharkhand, Ranchi, Abhay Nindkan Tigga, then then Electrical Engineer, Central University of Jharkhand, Ranchi entered into a criminal conspiracy with the proprietors/Directors/ Partners of 12 private firms, viz, M/s Rock Drill India, Ranchi, M/s Sadanand Gupta, Ranchi, M/s Park Sarva Mangala Project, Ranchi, M/s J.C. Enterprises, Ranchi, M/s Raj construction, Garhwa, M/s Mourya Heritage Inn Pvt. Ltd, Ranchi and others during the period 2 2010 to 2014 and committed the offences of cheating and criminal misconduct and in pursuance thereof, cheated the Central University of Jharkhand, Ranchi by causing to it a wrongful loss of Rs. 7,11,89,770/(approx) and corresponding wrongful gain to themselves, in the matter of award of construction works of different buildings for the permanent campus of Central University of Jharkhand by abusing their official position and awading the works at exorbitant rats to the said firms. It is further alleged that the above mentioned public servants of Central University of Jharkhand entered into conspiracy with 12 firms awarded the work of construction of different buildings to the said firms at exorbitant rats and fraudulently made payment of Rs. 93,94,77,420/ to them and cheated the Central University of Jharkhand to the tune of Rs. 7,11,89,776/ as a result of fraudulment payment made to those firms. Thus, Central University of Jharkhand, Ranchi was put to a wrongful loss of Rs. 7,11,89,776/ and corresponding wrongful gain was made by the accused firms. On the basis of these allegations, the instant case has been lodged. A.B.A. N0. 1098 of 2017 Learned counsel appearing on behalf of the petitioner Rajesh Kumar has submitted that the the petitioner has been falsely implicated in this case. Further, it has been submitted that the Rock Drill India is a proprietorship firm and the petitioner, namely Rajesh Kumar is the sole proprietor. Further, it has been submitted that the C.B.I after completion of investigation, submitted chare sheet vide ChargeSheet No. 13/16 and upon submission of chargesheet, the learned trial court took cognizance of the offences. It is further submitted. It was specifically mentioned in the said notice inviting tender that there is four categories for empanelment which are as follows: Sl. No. Group Nature of

work Estimated Value E.M1A Civil/Internal Above 25 Crores 5 lacs Electrification/H.A .V.C/Services 3 2 B Civil/Internal 10 Crores to 25 3.5 Lacs Electrification/H.A crores .V.C/Services 3 C Civil/Internal 5 Crores to 10 2.5 Lacs Electrification/H.A Crores .V.C/Services 4 D Civil/Internal 3 Crores to 5 1 Lac Electrification/H.A Crores .V.C/Services It has also been submitted that the petitioner's firm did the construction work 56% above of DSR,2007 but at the relevant time, Government of India issued the office memorandum dated 28.12.2011 to which the Government has approved rate for Ranchi is 158 ie. Above 58% of the DSR 2007 as well as during the period of contract agreement, the Government of India, vide its letter dated 03.07.2012 issued fresh guideline and hike in the construction rate ie. 174 above of DSR 2007. It is further submitted that at the time of agreement,Government of India also provided cost Indices for 2012/2011 and as per the Government of India, the rate of Ranchi is 158 ie. 58% above of DSR 2007 and the petitioner did a construction work above 56% of the DSR 2007 and such no question of wrongful loss could arise from the part of the petitioner. It is submitted tht as per the allegation made against the petitioner that due to the act of the petitioner, the Central University of Jharkhand has suffered wrongful loss of Rs. 57,66,991/ but as a matter of fact, the Central University of Jharkhand is a defaulter of the petitioner for not paying the lawful claim of the petitioner for the construction work done by him for an amount of Rs. 3,48,64,092/ as such due to the meanness of the Central University of Jharkhand the petitioner has suffered heavy loss. Further, it has been submitted that during the period of investigation the petitioner has fully cooperated the Investigating Officer and the was never arrested. It is further submitted that investigation in this case is complete, final form has been submitted, cognizance has been taken, the petitioner has never been arrested during investigation and 4 Trial will take some time. Considering all these facts, the petitioner deserves privilege of anticipatory bail. On the other hand learned standing counsel for the C.B.I opposed the prayer for anticipatory bail and filed counteraffidavit. Referring to various paras of the counteraffidavit, learned standing counsel for the C.B.I has submitted that the petitioner entered into criminal conspiracy with the officers of Central University of Jharkhand and got the work awarded at higher rate. The petitioner was awarded the work at the rate of 56% above DSR2007 which was 7% higher than the rate of

L1 and thus, he stands to have a wrongful gain to the tune of Rs. 92,65,613/. The allegation leveled against the petitioner has been proved during investigation. So, considering the aforesaid facts, the petitioner does not deserve privilege of anticipatory bail. A.B.A. N0. 1116 of 2017 Learned counsel appearing on behalf of the petitiioner Sadanand Gupta has submitted that the petitioner has been falsely implicated in this case. Further, it has been submitted that the M/s Sadanand Gupta is a partnership frim and the petitioner is one of the partner of the said Firm. Further, it has been submitted that the C.B.I after completion of investigation, submitted chargesheet vide ChargeSheet No. 13/16 dated 30.11.2016 and upon submission of chargesheet, the learned trial court took cognizance of the offences. It is further submitted. It was specifically mentioned in the said notice inviting tender that there is four categories for empanelment which are as follows: Sl. No. Group Nature of work Estimated Value E.M1A Civil/Internal Above 25 Crores 5 lacs Electrification/H.A .V.C/Services 2 B Civil/Internal 10 Crores to 25 3.5 Lacs Electrification/H.A crores .V.C/Services 3 C Civil/Internal 5 Crores to 10 2.5 Lacs 5 Electrification/H.A Crores .V.C/Services 4 D Civil/Internal 3 Crores to 5 1 Lac Electrification/H.A Crores .V.C/Services It has also been submitted that the petitioner's firm completed 80% of construction work, but the Central University of Jharkhand has not paid Running Account Bill properly and presently approx Rs. 7,61,32,986/ is still due against the Central University of Jharkhand. It is further submitted that the petitioner's firm did the construction work 56% above of DSR,2007 but at the relevant time, Government of India issued the office memorandum dated 28.12.2011 to which the Government has approved rate for Ranchi is 158 i.e. Above 58% of the DSR 2007 as well as during the period of contract agreement, the Government of India, vide its letter dated 03.07.2012 issued fresh guideline and hike in the construction rate ie. 174 above of DSR 2007. It is submitted that as per the allegation made against the petitioner that due to the act of the petitioner, the Central University of Jharkhand has suffered wrongful loss of Rs. 92,65,613/ but as a matter of fact the Central University of Jharkhand has retained the running account bill of RS. 7,61,32,986/. Further, it has been submitted that at the time of agreement, Government of India also provided cost Indices for 2012/2011 and as per the Government of India, the rate of Ranchi is 158 i.e 58% above of DSR2007 and the petitioner did a construction

work above 56% of the DSR 2007 and as such no question of wrongful loss could arise from the part of the petitioner. Further, it has been submitted that during the period of investigation the petitioner has fully cooperated the Investigating Officer and he was never arrested. It is further submitted that investigation in this case is complete, final form has been submitted, cognizance has been taken, the petitioner has never been arrested during investigation and Trial will take some time. Considering all these facts, the petitioner deserves privilege of 6 anticipatory bail. On the other hand learned standing counsel for the C.B.I opposed the prayer for anticipatory bail and filed counteraffidavit. Referring to various paras of the counteraffidavit, learned standing counsel for the C.B.I has submitted that the petitioner entered into criminal conspiracy with the officers of Central University of Jharkhand and got the work awarded at higher rate. The petitioner was awarded the work at the rate of 56% above DSR2007 which was 7% higher than the rate of L1 and thus, he stands to have a wrongful gain to the tune of Rs. 92,65,613/. The allegation leveled against the petitioner has been proved during investigation. The petitioner submitted forged certificates for getting empanelled with Central University of Jharkhand and stands to gain wrongfully. So, considering the aforesaid facts, the petitioner does not deserve privilege of anticipatory bail. Having heard the learned counsel for the parties and after going through the records, final form, material collected by the C.B.I against the petitioners and also the fact that final form has been submitted in this case, cognizance has been taken, trial will take some time, during investigation these petitioners co operated in the investigation and they were never arrested by the I.O, I am inclined to admit the petitioners on anticipatory bail. Accordingly, they above named petitioners are directed to surrender in the Court below within four weeks from the date of this order and in the event of their arrest or surrender the Court below shall enlarge the above named petitioners on bail on furnishing bail bond of Rs. 15,000/ (Rupees fifteen thousand)each, with two sureties of the like amount each to the satisfaction of the court of Sri B.K. Tiwary, learned Special Judge, C.B.I (A.C.B.), Ranchi in connection with R.C11(A)/2014R, subject to conditions as laid down under Section 438(2) of the Cr.P.C and also subject to further condition that one of the bailors must be local resident of 7 Ranchi district. Petitioners shall fully cooperate with the CBI and also appear physically on each and every date before the trial court till

trial framing of charge. If they want exemption from appearance, they will inform the CBI in advance and after taking necessary permission from Trial Court, they may be exempted from personal appearance. The petitioners shall not try to influence the prosecution witnesses during trial. The petitioners shall deposit their pass port (if any) before the trial court. Let a copy of this order be communicated to the trial court and a copy of this order be handed over to the learned standing counsel for the C.B.I. (Anant Bijay Singh, J.) Satyarthi/

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com