

Jayachandra Vs. Anti-Corruption Bureau, Rep. by its Special Public Prosecutor

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Court : Karnataka

Decided On : Feb-23-2017

Judge : P.S. Dinesh Kumar

Appeal No. : Criminal Petition No. 576 of 2017

Appellant : Jayachandra

Respondent : Anti-Corruption Bureau, Rep. by its Special Public Prosecutor

Judgement :

(Prayer: This CrI.P is filed u/s.439 Cr.P.C praying to enlarge the Petr. on bail in Cr.NO.25/2016 of Anti-Corruption Bureau, Bangalore City P.S, Bangalore for the offences P/U/Ss.13(1)(e), 13(1)(d), 13(2) of P.C Act. The XXIII Addl. City Civil and S.J., Spl. Judge, Bangalore Urban District, Bangalore has rejected the Bail Application on 12.01.2017 in Cr.No.25/2016.)

1. This petition under Section 439 Cr.P.C, is filed by the petitioner for grant of bail in Crime No.25/2016 registered by the respondent / Anti - Corruption Bureau ('ACB' for short) for the offences punishable under Sections 13(1)(e), 13(1)(d) and 13(2) of the Prevention of Corruption Act, 1988 ('PC Act' for short).

2. Heard Shri C.V.Nagesh, learned Senior Counsel for Shri Sandeep Patil, Advocate for the petitioner and Shri Jagadeesh B.N, learned Spl. PP for the respondent - ACB.

3. The case of the prosecution is that, the petitioner has acquired disproportionate assets to his known source of income in the check period between 19.12.2008 and 5.12.2016; that on an earlier occasion also the Lokayukta had registered a case on 17.12.2008 alleging acquisition of assets disproportionate to his known source of income; and that the petitioner had continued to indulge in illegal acts and acquired assets disproportionate to his income.

4. On 30.11.2016, the Income Tax Authorities conducted a raid on 4 houses belonging to the petitioner and currency worth more than Rs.5 Crores in the denomination of Rs.2,000/- and Gold weighing more than 7 Kgs, Silver Articles and other valuables found. It is further alleged that petitioner's son had acquired several expensive automobiles in Benami names. The total amount of assets belonging to the petitioner is estimated at Rs.14 Crores. After deducting legitimate earnings of the petitioner, the estimated value of assets disproportionate to the known source of income is Rs.12,50,00,000/- for the check period between 19.12.2008 and 5.12.2016.

5. Arguing in support of the petition, Shri C.V. Nagesh, learned Senior Counsel submitted that, the CBI have registered a case in RC 23(A)/2016 for offences punishable under Section 13(1)(d) of PC Act. Therefore, there cannot be a second FIR in respect of the same cognizable offences on the same set of facts. He submitted that Cr.P.C, does not contemplate registration of more than one FIR in respect of one crime.

6. It is contended in the petition that to constitute an offence under Section 13(1)(e), what is relevant is acquisition of properties disproportionate to known source of income. The offence can be said to have taken place only upon the failure on the part of public servant to satisfactorily account for the asset. Therefore, it is highly illegal to register an FIR without seeking any explanation from the public servant.

7. Learned Senior Counsel further submitted that at the time of Income Tax raid, a sum of Rs.27 Lakhs was seized. It has been specifically stated before the tax authorities that the amount was given by three different persons as advances towards sale consideration of three apartments.

8. It was further contended that the petitioner is a person of good repute and a law abiding citizen. He is a public servant with considerable service in the State Government. He has deep roots in the society. Therefore, there can be no apprehension of him fleeing from justice. Learned Senior Counsel also submitted that all further proceedings in Crime No.25/2016 have been stayed by this Court vide Order dated 27.1.2017 in W.P.No.3091/2017. Accordingly, he prayed for allowing this petition.

9. Learned Spl. PP opposed the petition, but did not dispute that the proceedings in Crime No.25/2016 have been stayed by this Court.

10. This petition was considered simultaneously with Crl.P.No.366/2017, wherein, the petitioner has sought bail in a case registered by Enforcement Directorate, Bengaluru Zone in case No.ECIR/BGZO/13/2016.

11. I have carefully considered the submissions of Shri C.V. Nagesh, learned Senior Counsel and Shri Jagadeesh B.N, learned Spl. PP for the respondent - ACB; and perused the records.

12. At the outset, it is relevant to note that, the sum of Rs.27 Lakhs, which has been found at the time of raid is sought to be explained by the petitioner in paragraph - 12 of the petition, as follows:-

"12. At the time when the Income Tax officials conducted raid, an amount of Rs.27,00,000/- was seized from the two premises belonging to the Petitioner. One a residential house in Chandra Layout, Bengaluru and the other being an apartment in Raheja Pebble Bay in Bengaluru. It has been specifically stated before the authorities that the amount was given by three different persons as advances towards the sale consideration of three apartments being constructed by M/s.Shakya Constructions and Developers, a partnership concern. Petitioner's

wife Mrs.Bharati and his son Mr.Thrijesh are the partners in the said construction firm. The amount given and the persons who have remitted the amount is as under

NAME OF THE PERSON	AMOUNT REMITTED IN CASH IN RS.	APARTMENT PARTICULARS
Mr.Purushottam	10,00,000/-	Flat No.F-2, First Floor, Shakya Elite, Site No.1335, 1 st Block, 1st Stage, Nagarbhavi, Bengaluru
Mr.Devanand	10,00,000/-	Flat No.S-3, Second Floor, Shakya Elite, Site No.1335, 1 st Block, 1st Stage, Nagarbhavi, Bengaluru
Mrs.Rathod	7,00,000/-	Flat No.303, Shakya Enclave, No.12, 2 nd Main, KPA Layout, Chandra Layout, Bengaluru

From the above narrative it can be concluded that the amount of cash found in the premises of Petitioner in fact belongs to the partnership concern and not to the Petitioner herein and that there are satisfactory explanations provided as above that are available with the authorities. Hence, the amount so recovered by no stretch of imagination constitutes the commission of the alleged offences and hence Petitioner is entitled for bail."

(emphasis supplied)

13. During the course of hearing, learned Counsel for the petitioner has filed affidavits of the three alleged prospective purchasers namely, H. Nischal Anantha Purshotham, Devanand and Anil Rathod in CrI.P.No.366/2017, which is heard along with this petition. In his affidavit, Purshotham has stated as follows:-

"4. I state that I am a genuine person and not a fictitious one as is being contented by the Enforcement Directorate. I reiterate that I did pay to the hands of Smt. Bharathi Jaychandra a total sum of Rs.10,00,000/- in cash on three occasion ie. Rs.5,00,000/- on 5.08.2016, Rs.3,00,000/- on 8.09.2016 and Rs.2,00,000/- on 5.10.2016, by way of advance sale consideration after finalizing the deal for purchase of a unit bearing number No.S-2 (302), Second Floor, Shaakya Elite, No.1133, 1st Block, 1st Stage, Nagarbhavi, Bengaluru".

(emphasis supplied)

Paragraph - 4 of Devanand's affidavit reads as follows:-

"4. I state that I am a genuine person and not a fictitious one as is being contented by the Enforcement Directorate. I reiterate that I did pay to the hands of Smt.Bharathi Jaychandra on 1.09.2016 a sum of Rs.10,00,000/- by way of advance sale consideration after finalizing the deal for purchase of a unit bearing number F-3 (203), First Floor, Shaakya Elite, No.1133, 1st Block, 1st Stage, Nagarbhavi, Bengaluru."

(emphasis supplied)

Paragraph - 4 of Anil Rathod's affidavit reads as follows:-

"4. I state that I am a genuine person and not a fictitious one as is being contented by the Enforcement Directorate. I reiterate that I did pay to the hands of Smt.Bharathi Jaychandra on 1.09.2016 a sum of Rs.7,00,000/- by way of advance sale consideration after finalizing the deal for purchase of a unit bearing number No. 302, 3rd Floor, Shaakya Enclave, No.12, 2nd Main, KPA Layout, Chandra Layout Bengaluru".

(emphasis supplied)

14. As noticed hereinabove, the prospective purchasers in their respective affidavits have categorically stated and reiterated that they have paid money in the hands of petitioner's wife between 5.8.2016 and 5.10.2016. The notes with face value of Rs.500/- and Rs.1,000/- were demonetized with effect from 8.11.2016.

The sum of Rs. 27 Lakhs found during the raid is sought to be explained as advance sale consideration. Seller of the Flat is M/s.Shaakya Constructions, which is said to be Private Limited Company. Admittedly, raid was conducted on 30.11.2016. As per the affidavits of the prospective purchasers, the last payment was received on 5.10.2016 on which date, the currency with face value of Rs.2,000/- was not in existence. Therefore, by logical corollary, the said prospective purchasers could have given the said amount in any demonetized currency other than Rs.2,000/-. Hence, it leads to an irrefutable inference that, in the least, Rs.5 lakhs of demonetized notes found during the raid have been got converted either by the petitioner or his family member or any other person on their behalf. If the amount of Rs.27 Lakhs was indeed a part of sale consideration of Flats proposed to be sold by the construction company, the same would have been received by the Company in the manner known to law and in the least, would have been converted in accordance with law. Therefore, it is difficult to countenance that the money seized during the raid prima facie belonged to the construction Company.

15. Thus, facts enumerated herein, lead to a logical inference that the currency worth Rs.27 Lakhs both in the form of new and demonetized notes found in the premises of the petitioner does not appear to legitimately belong to the construction company or the family of petitioner. The petitioner is a high ranking official with the State Government. In the instant complaint by the ACB, it is alleged that the petitioner has acquired assets disproportionate to his known source of income. Lokayukta is awaiting approval from the State Government to prosecute the petitioner for acquisition of assets in excess of his known source of income to an extent of 102.69% for the check period between 1.2.1985 and 18.12.2008.

16. Whilst, the Lokayukta is awaiting approval from the Government of Karnataka to prosecute the petitioner for the offences committed during the earlier check period, in the raid conducted on 30.11.2016, currency notes worth Rs.27 Lakhs have been found. In the complaint filed by the Enforcement Directorate, there is also an allegation that the petitioner has got demonetized currency valued at Rs.6,12,50,000/- converted into new currency notes having a value of

Rs.4,90,00,000/-. In any event, it is irrefutable that Rs.27 Lakhs of cash was found at the time of raid that the explanation is prima facie unsatisfactory. In view of my finding that explanation for Rs.27 Lakhs is unsatisfactory coupled with the fact that there was an earlier raid in the year 2008 wherein acquisition of assets disproportionate to the extent of 102.69% in excess of known source of income has been alleged against the petitioner, in my considered view, it is not a fit case to enlarge the petitioner on bail. It was argued on behalf of the petitioner that further proceedings in Crime No.25/2016 have been stayed by this Court in W.P.No.3091/2017 and therefore the petitioner is entitled to be released on bail. But, in the connected CrI.P.No.366/2017, which was heard simultaneously, I have held that the petitioner is not entitled to be released on bail for the reasons recorded therein. Therefore, it would be incongruous to order release of petitioner on bail in this case whilst the petitioner is in detention under the provisions of Prevention of Money Laundering Act, 2002. The ACB has registered the FIR for offences punishable under Section 13(1)(e), 13(1)(d) and 13(2) of PC Act. Cases registered by the ACB and Enforcement Directorate have stemmed out of the raid conducted by the Income Tax Department.

17. In the circumstances, this petition deserves to be dismissed granting liberty to the petitioner to renew his prayer for grant of bail if he is released from detention under the Prevention of Money Laundering Act, 2002 or in the event W.P.No.3091/2017 being allowed by this Court, whichever is earlier.

18. Resultantly, this petition fails and is accordingly dismissed.

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