

R. Vasudevan Vs. Cbi

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Court : Delhi

Decided On : Jan-14-2010

Reported in : 166(2010)DLT583

Judge : V.K. Shali, J.

Acts : [Prevention of Corruption Act, 1988](#) - Sections 7, 8, 12, 13(1) and 13(2); Delhi Special Police Establishment Act - Sections 6A; Code of Criminal Procedure (CrPC) - Sections 437(1) and 439; Indian Penal Code (IPC) - Sections 120B

Appeal No. : Bail Application No. 2381/2009

Appellant : R. Vasudevan

Respondent : Cbi

Advocate for Def. : Sonia Mathur, Standing Counsel for CBI

Advocate for Pet/Ap. : K.K. Sud, Sr. Adv. and; Ghanshyam Sharma, Adv

Disposition : Application allowed

Judgement :

V.K. Shali, J.

1. This is a bail application filed by the petitioner under Section 439 Cr.P.C. for an offence under Section 120B IPC and Section 7, 8, 12, 13(2) read with Section

13(1)(d) of the [Prevention of Corruption Act, 1988](#) registered by the respondent vide case No. 03(A)09-ACU-IX.

2. Briefly stated the facts of the prosecution case are that CBI had received an information from a reliable source that one Manoj Kumar Banthia was approached by Ankur Chawla, Advocate representing a faction of M/s Amar Ujala Publications who was to get in touch with Sh. R. Vasudevan, present petitioner Member of Company Law Board for getting a favourable judgment in the matter of appointing an independent President of the Amar Ujala Publication. It was allegedly revealed that a case relating to Amar Ujala Publication was pending before Mr. R. Vasudevan, the present petitioner Member of Company Law Board who had allegedly demanded and agreed to accept an illegal gratification of Rs. 7,00,000/- from Manoj Kumar Banthia. It is further alleged that Manoj Kumar Banthia in turn demanded Rs. 10,00,000/- from Ankur Chawla. The information was that this illegal gratification of Rs. 10,00,000/- will be paid to Manoj who will then pay Rs. 7,00,000/- to the petitioner at his official residence located at 11, W-Block, HUDCO Place Extension, Andrews Ganj, New Delhi. On the basis of this information a case under Section 120-B IPC read with Section 7, 8, 12, 13(2) read with Section 13(1)(d) of the [Prevention of Corruption Act, 1988](#) was registered against petitioner, Manoj Kumar Banthia, Company Secretary and Ankur Chawla and the matter was handed over to Sh. Satyender Gossain, Inspector, ACU (IX) for investigation.

3. On 23rd November, 2009 at about 9.00 PM a CBI team consisting of Satender Gosain (Inspector), Sudhansu Shekhar (Inspector) Bhaskar Pratap Singh (Constable), Virender Singh (Constable) along with two independent witnesses Sh. Ashok Kumar and Dr. Sudhir Gupta were organized. The CBI team along with independent witnesses arrived at HUDCO and took suitable position. At about 9.40 PM it was seen that a taxi bearing registration No. DL 1T 6672 black colour ambassador stopped at the entry of the residential flat leading to the house of the petitioner. A person of the physical description which was disclosed in the source information came out of the taxi who was later on identified as Manoj Kumar Banthia. He was carrying cash to the house of the petitioner. At about 10.35 PM Manoj Kumar was seen coming out of the house and going without the paper bag

which he was initially carrying. On being intercepted and inquired about the paper bag which he was carrying, initially he got perplexed but on further questioning he revealed that he had left the paper bag at the residence of the petitioner. Thereafter, a raid was conducted at the residence of the petitioner and an amount of Rs. 55,00,000/- in cash was recovered from his residence.

4. In the recovery memo cum seizure memo it has been stated by Manoj Kumar that the aforesaid money was given to him by Ankur Chawla. The present petitioner/accused was arrested and remanded to police custody for a week on the ground that he will be taken to Chennai for the purpose of effecting some recovery, however, he was not taken. It is the case of the respondent that from Chennai a recovery of approximately Rs. 1,21,23,800/- or so was effected in cash from the number of lockers of the petitioner apart from the fact that he had number of other bank accounts where 51 lakhs of rupees were found in balance. The present petitioner was remanded to judicial custody as no further police remand was sought by the CBI.

5. The petitioner filed an application for grant of bail which was dismissed by the learned Special Judge/Sessions Judge vide order dated 4th December, 2009 on the ground that the case was at the initial stages and further that Rs. 1,21,23,800/- found in four bank lockers of the petitioner. Apart from that Rs. 51,00,000/- was found in 13 accounts of different banks of Chennai and Delhi. The learned Special Judge referred to the observations passed by the Apex Court in *Surain Singh v. State of Punjab* 2009 II AD (SC) 589 wherein it has been observed that the illegal gratification is a gigantic problem with the public servants which is increasing day by day and is corroding the system like cancer.

6. The petitioner feeling aggrieved has filed the present application seeking grant of bail to which reply has been filed by the CBI.

7. I have heard Sh. K.K. Sud the learned senior counsel for the petitioner as well as Ms. Sonia Mathur on behalf of the CBI. The contentions of the learned senior counsel for the petitioner are as under:

a. It was contended by Mr. Sud that admittedly the petitioner was arrested on 23rd November, 2009 and he was remanded to police custody for a period of seven days. After expiry of the said period further police remand was not sought by the respondent and he was remanded to judicial custody which is indicative of the fact that the petitioner was not required for any custodial interrogation. It was urged that no useful purpose would be served by keeping the petitioner incarcerated further especially in the light of the fact that he is a heart patient as he had undergone bypass surgery. It was also contended that although the respondent had sought remand of the petitioner for a period of seven days for the purpose of taking him to Chennai but without taking the petitioner to Chennai the respondent have effected the recovery of cash amounting to Rs. 1,21,23,800/- approximately from the lockers of the petitioner, and therefore, the present petitioner is not required for the purpose of any interrogation.

b. The second contention of the learned senior counsel is to the effect that the case which has been registered against the petitioner is under Section 120B IPC, Section 7, 8, 12, 13(2) read with Section 13(1)(d) of the PC Act. So far as the Section 7, 8 & 12 are concerned, it was contended that they carry a maximum sentence of five years although it was contended that the offence of abetment will not be made out against the petitioner. So far as the Section 13(2) of the P.C. Act is concerned, it was contended that what was invoked by the respondent was Section 13(1)(d) (ii) of the P.C. Act which makes it a criminal misconduct by a public servant if he by abusing his position as a public servant obtains for himself or for any other person any valuable thing or pecuniary advantage. It was contended that the offence under Section 13(1)(d)(ii) of the P.C. Act carries a maximum punishment of seven years. In the light of these punishments prescribed for the various alleged offences it was contended that the petitioner at best, assuming though not admitting that he had committed an offence of corruption was carrying a maximum sentence of five years or seven years and therefore in terms of Section 437(1) Cr.P.C. which guidelines are applicable to Section 439 also the petitioner may not be denied bail. The petitioner has already remained in custody for more than 51 days and no useful purpose would be served by keeping the petitioner incarcerated.

c. The third argument by the learned Senior Counsel was to the effect that as on date there is no charge under Section 13(1)(e) P.C. Act which is registered against the present petitioner which makes possession of disproportionate assets to the known sources of income of the accused, as a criminal offence inviting the harsh punishment. This submission was urged by the learned Counsel for the petitioner on the ground that the effort of the respondent is to create a bias in the mind of the Court qua the present petitioner by alleging that there was a recovery of Rs. 55,00,000/- in cash from the petitioner from his Delhi residence and a sum of Rs. 1,21,23,800/- by way of cash from four lockers in Chennai apart other recoveries. It was contended that as and when the FIR under Section 13(1)(e) of the Prevention of Corruption Act is registered the petitioner will be issued a show cause notice to which he will have time to reply.

d. The fourth submission is that the respondent is adopting a discriminatory attitude in the investigation of the matter qua the present petitioner. It is contended that the respondent are hobnobbing with the co-accused Ankur Chawla and are trying to obtain evidence from him only with a view to fix up the present petitioner knowing fully well that it was Ankur Chawla kingpin who was representing the group before the present petitioner in the Company Law Board which is alleged to be requiring a favourable order from the petitioner. It was contended that such discriminatory attitude adopted by the CBI cannot be approved, so as to deprive the benefit of bail being granted to the petitioner. On the contrary, it was contended that this is one of the important consideration on the basis of which the Court must take cognizance and consider it to be a relevant factor for the purpose of grant of bail to the present petitioner. The learned senior counsel for the petitioner in this regard has referred to the observations of this High Court in case Binoy Jacob v. CBI 1993 JCC 131. The learned Counsel contended that the petitioner will abide by all such terms and conditions which the Court may like to impose for enlargement of the petitioner on the ground that he has already suffered incarceration for more than 51 days and he is not likely to flee away from the processes of law.

8. The learned Counsel for CBI Ms. Sonia Mathur has vehemently contested the grounds urged by the present petitioner for grant of bail. It was contended that the

case is at the crucial stage, therefore, the petitioner may not be enlarged on bail. It was contended that the petitioner is an influential person, and therefore, not only he will run away from the processes of law but he may even tamper with the evidence. The learned standing counsel further contended that so far as the allegation of adopting a discriminatory attitude qua the present petitioner is concerned, it was contended that the respondent has not exonerated the person named as an accused in the FIR but as and when evidence comes on record against him appropriate action will be initiated against him.

9. The learned Counsel for CBI has contended that no case under Section 13(1)(e) of the Prevention of Corruption Act as on date has been registered against the present petitioner, however, as and when the evidence comes on record against the present petitioner of the said offences an appropriate action will be initiated against him. As regards the petitioner being not medically fit it was contended that even the perusal of discharge summary and the other medical papers of the present petitioner indicate that the petitioner had undergone bypass surgery way back in 2007, and he is being provided with facility of necessary medical checkup at regular intervals.

10. I have heard the learned Counsel for the petitioner as well as the learned Standing Counsel for CBI on the bail application. I have also carefully gone through the record.

11. No doubt, the offence of corruption is a serious offence and has eaten the vitals of our system more so when it is done by persons who are holding positions of power and authority. But still the question which needs to be considered dispassionately and objectively at this stage is that as to whether in a given case the petitioner who is alleged to have committed the offence under the Prevention of Corruption Act deserves to be enlarged on bail or not. No doubt the grant of bail in a non-bailable offence is a matter of discretion which the Court has exercised judicially but at the same time the bail should not be denied to an accused only as a matter of punishment. There are two paramount considerations which the Court has to consider while enlarging the accused on bail. First as to what is the gravity of the offence and whether the accused would submit himself to processes of law

or not? Secondly will the grant of bail endanger the fair investigation or the holding of a fair trial or in other words will the accused tamper with evidence.

12. Keeping in view the above broad parameters no doubt the petitioner was arrested on 23rd November, 2009 immediately after the other co-accused Manoj had delivered a sum of Rs. 7,00,000/- and the consequent recovery of Rs. 55 lakhs which included prima facie this amount shows that the petitioner had been ostensibly misusing his official position in amassing huge cash/wealth for which he has not been able to give any plausible explanation weighs heavily against him. This view further gets fortified by the huge cash recovery of Rs. 1,21,23,800/- or so from Chennai but then this ground in itself cannot be ground to deny the bail because then we will be punishing the accused even before he has been found guilty.

13. The next question which arises is whether he will subject himself to processes of law. The learned Standing Counsel for CBI had raised the question that the petitioner is being quite influential, and therefore, capable of influencing witnesses and consequently bail is denied. As against this the learned senior counsel had referred to the judgment in case titled Ravi Singhal v. UOI and Anr. 1993 JCC 306 in order to urge that a very fact that the petitioner is holding a very high status in the society or a higher position in itself is a sure shot consideration to show that the petitioner is not going to flee from processes of law. He will subject himself to law as and when called upon.

14. I am of the considered opinion that the petitioner is holding a high position, or is influential, or is resourceful works as a double edged weapon which can cut both ways. The position, the status and the influence of an accused person can no doubt be a ground for denial of bail in a case where the apprehension expressed by the investigating agency is genuine and where there are sufficient prima facie reasons to believe that he would influence the witnesses or tamper the evidence to deny the bail to him, but at the same time such a status, position can also be valid consideration to show that the accused has roots in the society and is therefore not going to run away from the processes of law. He will permit and make himself available during the course of investigation or the trial as the case may be. In the

instant case the statements of witness have already been recorded. No doubt, the petitioner was holding a sensitive and a high position, but I feel that this is a case where he will not be able to influence the investigation which is almost already complete. Most of the evidence against him is in the nature of recoveries and the documentary evidence regarding the recovery of huge ill gotten money both from his residence in Delhi as well as from Chennai which he cannot tamper. Apart from this, the concern of the investigating agency regarding the tampering of evidence or influencing the witnesses, can be taken care of imposing suitable conditions on the accused, while granting bail. Further nothing precludes the investigating agency to move an application for cancellation of the bail of an accused in case it has slightest prima facie evidence to show that he is influencing or trying to influence the investigation or the witnesses. Accordingly, I feel in the instant case since the nature of evidence which has been collected by the investigating agency is in the form of huge recovery of unaccounted money in cash both from the Delhi residence and Chennai residence, apart from other circumstantial evidence, I feel that the chances of the petitioner trying to erase the evidence or influence that witness are remote and if he tries to do the same investigating agency shall be free to file the application seeking cancellation of his bail.

15. Another point which arises for consideration is the discriminatory treatment of the petitioner qua the other co- accused Ankur Chawla who is named in the FIR. The Sessions Judge had rejected this plea of the petitioner by observing that it is not for the Court to say as to when and which of the accused is to be arrested. This is true that the investigation is in the exclusive domain of the police or the investigating agency and ordinarily the Court would not interfere in the investigation except to the extent what is permitted under Chapter XII of the CPC. But at the same time, the High Court cannot ignore the fact, in case the investigating agency is acting in a discriminatory or arbitrary manner.

16. Coming back to the facts of the present case the FIR has been registered against not only the petitioner but also against the co-accused Manoj who is in custody and one Ankur Chawla a legal practitioner representing a group of share holders headed by Atul Maheshwari, who were litigating for control of management of Amar Ujala Publication in respect of which a dispute was pending

before the present petitioner. The FIR is against all the three persons has been registered on the basis of source information that they were indulging in a conspiracy to commit an offence under various sections of Prevention of Corruption Act yet no action has been taken against the said person by the investigating agency on the ground that the investigating agency has recorded his statement and as and when anything incriminating is brought on record he will be also treated in the same manner in which the petitioner has been. The court fails of understand as to what other evidence ought to have been there before any action could be taken against a co-accused named in the FIR who had prima facie been responsible for arranging the funds and actively participating in giving the bribe. The Santhanam Committee Report which was constituted almost five decades back had observed that there is no dearth of people who want to be corrupted and who want to corrupt. If this cancer of corruption is to be treated and eliminated, both of them have to be dealt with equally with a even and heavy hand. That is why the abettor of prevention of corruption entails punishment of five years under P.C. Act.

17. In the instant case it seems that colour of dress of the co- accused has weighed with the investigating agency and it has for reasons best known to them chosen to record the statements of the co-accused on couple of occasions who is bound to feign ignorance and make his statement exculpating himself. Such an unfair approach does not befit the premier investigation agency like CBI as it certainly shows discrimination qua the petitioner. Our own High Court in Binoy Jacob (supra) case has very categorically observed that our country is governed by rule of law which envisages that all persons must be dealt with the same manner while doing so. The Court has certainly not only an obligation but also a right to call upon the investigating agency to explain its actions qua a particular co-accused and in case any reasonable explanation is not given it may draw its own conclusion.

18. These observations of our own High Court are important consideration. In the present case, I feel that the investigating agency has not adopted a just and fair approach in treating all the accused persons on a even pedestal while as the petitioner has been arrested on 23.11.2009 yet no action has been taken against

the third co-accused Ankur Chawla despite the fact that he is specifically named in the FIR and where in view of the Court prima facie there is sufficient evidence to show that he was also a part of the conspiracy not only to commit the offence but also abettor of the offence. Beyond this the Court does not want to observe anything and leave the things to the wisdom of the investigating agency, therefore Court takes this also a valid consideration to exercise discretion for grant of bail to the present petitioner.

19. The learned senior counsel for the petitioner at the fag end had also referred to Section 6A of the Delhi Special Police Establishment Act which requires obtaining of a sanction before registration of an FIR against the petitioner being holder of an office of the rank of the Joint Secretary or above. It was also urged that before his appointment as a Member of the Company Law Board a report from Vigilance as well as IB shows that there is nothing incriminating against him so far as his integrity is concerned which is also a ground for bail. I feel that merely because the petitioner's earlier of criminal misconduct of misusing of his position and amassing a huge cash, for which he is not able to give any reasonable explanation till date has gone un-noticed is not in itself a ground for release of bail. Similarly the vigilance or the IB reports also do not help him in any manner. The alleged non-compliance of Section 6A also does not help the petitioner because I agree with the contention of the learned Counsel for the CBI that the offence of corruption may so sudden that in a given case it may defeat the ends of justice if one has to obtain the sanction for registration of the offence.

20. There are two more considerations which weigh with the Court for enlarging the petitioner on bail. These are firstly that the petitioner's remand was obtained for seven days for taking him to Chennai but he was never taken there after he was remanded to judicial custody. The CBI never sought any permission to interrogate him, therefore, the continued incarceration of the petitioner in my view is not going to serve any purpose except to deny the benefit of bail to him by way of punishment. Secondly, the petitioner is admittedly patient who has undergone bypass surgery. Although no grievance has been raised by the learned senior counsel for the petitioner regarding the non availability of medical aid or medical checkup but still the medical status of the petitioner which has been placed on

record is certainly also a valid consideration that he had undergone a coronary bypass surgery only in 2007. This in my view is also a ground to be taken into account.

21. Keeping in view the aforesaid facts and the totality of circumstances. I feel that this is a fit case where the petitioner, who is in custody since 23.11.2009, should be released on bail on furnishing personal bond in the sum of Rs. 50,000/- with two sureties for the like amount to the satisfaction of the learned Special Judge and subject to the following conditions:

a. That he shall surrender his passport if not already seized

b. That he shall not leave the National Capital Territory of Delhi without the permission of the Trial Court and in case he is given permission to leave NCT of Delhi he shall inform the purpose duration of visit as well the address where he is going to stay. Further, no permission be given to visit Chennai till charge sheet is filed.

c. He shall not tamper with the evidence or influence the witnesses or do any act which will create a reasonable ground to assume that the petitioner is trying to create hurdle in the fair investigation or trial of the case which will entail cancellation of his bail.

d. The petitioner shall report once in a week at 11.00 A.M. to the Superintendent of Police, Sanjay Kumar Singh, CBI ACU IX, at CGO Complex, New Delhi-03 or such other officer as may authorized by him so as to enable them to question the petitioner, if so required, till the time his charge sheet is filed.

22. With these directions, the bail application stands allowed. However, expression of any opinion hereinbefore may not be treated as an expression on the merits of the case.