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Court : Delhi

Decided On : Mar-24-2003

Reported in : 104(2003)DLT210; 2003(68)DRJ125; 2003(2)JCC632

Judge : R.C. Chopra, J.

Acts : Prevention of Corruption Act, 1988 - Sections 13(1), 120B, 420, 468 and 471; Indian Penal Code (IPC), 1860; Code of Criminal Procedure (CrPC) , 1973 - Sections 438

Appeal No. : Crl. M. (M). No. 568 of 2003

Appellant : Kundan Lal

Respondent : State

Advocate for Def. : Pawan Sharma, Adv.

Advocate for Pet/Ap. : Sandeep Sethi, Adv

Disposition : Application dismissed

Judgement :

R.C. Chopra, J.

1. This petition under Section 438 of the Code of Criminal Procedure (hereinafter referred to as 'the Code' only) has been filed by the petitioner for grant of pre-

arrest bail in FIR No. 29/2001 registered at PS Anti Corruption Branch, New Delhi under Section 13(1)(d) of the Prevention of Corruption Act 1988 read with Sections 420/468/471/120-B of the IPC.

2. The facts relevant for the disposal of this application, briefly stated are, that the petitioner is working as a Joint Director (Slum & JJ), a department of Municipal Corporation of Delhi. The residents of Jhuggi Clusters at Gautam Puri were proposed to be shifted to an alternative site and as such, a scheme was formulated to ascertain and verify the bona fide residents of the JJ Cluster at Gautam Puri so that they could be shifted to Bhalswa where they were to be provided alternative plots. The FIR referred to above made allegations against the petitioner and other officials of the Slum & JJ Department that they were allotting plots to those who were not entitled and it was being done after taking huge amounts in connivance with the property dealers. The name of one property dealer R.S. Sandhu was specifically mentioned who was allotted a number of plots in the names of fictitious persons on the basis of forged and fabricated documents. After the registration of the case, investigations were taken up and it was found that the said R.S. Sandhu was holding as many as 28 plots in the name of non-existing persons. The petitioner who was a senior officer in the Department was the Chairman of the Lock Committee also which was constituted for the allotment of the plots to those whose Jhuggis were found locked at the time of survey. The I.O. found that the petitioner and the other members of the Committee had allotted plots without carrying out proper verification of the documents and without obtaining even the affidavits from the allottees. The statements of public witnesses Sushil Kumar, Yoda Ram and Ram Kirpal recorded under Section 161 of the Code clearly show that the petitioner and other officers of the Slum & JJ department were indulging in large scale corruption in the matter of allotment of the plots. The disclosure statement made by a co-accused Ram Charan Komal, Senior Investigator and a member of the Lock Committee also shows that the officers of the department were directly involved in this scandal. The statement of Shri S.K.Trivedi, the Deputy Commissioner, Slum & JJ department reveals that petitioner was not following the prescribed procedure in the matter of the allotment of the plots.

3. Learned Counsel for the petitioner has vehemently argued that the allotments were made provisionally only and were subject to verification and in the absence of any firm allotment, it could not be said that the petitioner and others had received any consideration or had abused their official position or had played any fraud in pursuance of any conspiracy. It is also submitted that on receipt of a complaint in this regard, the petitioner had instituted immediate departmental inquiry into the matter which shows his bona fides. It pointed out that some of the co-accused have already been enlarged on bail.

4. After considering the submissions made by learned Counsel for the petitioner and learned Counsel for the State, this Court is of the considered view that at this stage, it cannot be held that the allegations in the FIR or the statements of the witnesses recorded under Section 161 of the Code are false and no case whatsoever is made out against the petitioner. To the contrary, the evidence on record shows that the allotment of the plots, even if provisionally, was done without obtaining Affidavits even from those who had appeared before the Lock Committee of which the petitioner was the Chairman. The petitioner's own office order dated 17.1.2001 regarding Gautam Nagar Jhuggi dwellers shows that affidavits were an essential requirement which was given a go-bye by him in the present case. The availability of a large number of plots with one property dealer only speaks volumes about the fraud being played by the petitioner and his officers and as such, it cannot be said that all was clean and as such, the petitioner deserves to be enlarged on anticipatory bail.

5. The Apex Court has highlighted the relevance and importance of custodial interrogation in the cases of Pokar Ram v. State of Rajasthan & Ors. reported in : 1985 CriLJ1175 Directorate of Enforcement & Anr. v. P.V. Prabhakar Rao reported in (1998) 3 CCR 58=1997 SCC P 978; State represented by the CBI v. Anil Sharma : 1997 CriLJ4414 State of Andhra Pradesh v. Bimal Krishna Kundu & Anr. : 1997 CriLJ4056 Dukhishyam Benupani, Assistant Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria reported in I (1998) CCR 153=1998 SCC P 261; and Enforcement Officer, Ted, Bombay v. Bher Chand Tikaji Bora reported in 2000 (121) ELT.It has been held that the anticipatory bail intrudes into the sphere of investigations and as such, the Courts must be cautious and

circumspect in exercising this power which is discretionary in nature. It has also been held that grant of anticipatory bail in serious cases may have the effect of shaking the faith of people in the administration of justice. In cases registered under the Prevention of Corruption Act where a public servant is shown to be abusing his official position, the Courts must be slow in affording him protection and must give the Investigating Officer free hand to interrogate him thoroughly to reach to the bottom of the matter and find out as to how and in what manner the corruption was being indulged into.

6. The grant of regular bail to some co-accused who were officials of DDA and were not directly concerned with allotment of alternative plots is of no help to the petitioner. The initiation of action by petitioner on the basis of a complaint could be a ploy only to show to his superiors that he was not involved in the racket. However, many witnesses have mentioned his name as the person indulging in corruption.

7. thereforee, this Court has no hesitation in concluding that in view of the serious nature of the offence, gravity of the allegations and the facts and circumstances of the case, it is essential that the petitioner should face custodial interrogation before his case for bail is considered by the Courts. He, as such, is not entitled to anticipatory bail as prayed.

8. The application stands dismissed.