Sunil Shakt Vs. State

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Court : Delhi

Decided On : May-25-2001

Reported in : 94(2001)DLT495

Judge : Mr. S.K. Agarwal, J.

Acts : Code of Criminal Procedure (CrPC) , 1973 - Sections 29, 325 and 439; Indian Penal Code (IPC), 1860 - Sections 120-B, 324, 326, 354 and 409; Arms Act,1959

Appeal No. : Crl. M(M) No. 3986 of 2001

Appellant : Sunil Shakt

Respondent : State

Advocate for Def. : Ms. Richa Kapur, Adv.

Advocate for Pet/Ap. : Mr. R.K. Anand, Sr. Adv. and; Mr. Vikas Pahwa, Adv

Judgement :
ORDER

S.K. Agarwal, J.

1. This is an application under Section 439 Code of Criminal Procedure, 1973 (for short Cr.P.C.) for grant of bail in case FIR No. 100/97 PS Greater Kailash-I under

section 409 read with section 120B IPC.

2. Prosecution allegations in brief are : that petitioner was the Managing Director of M/s. Fintra Systems Limited, a non-banking finance company engaged in para-banking and related financial activities. The petitioner's through advertisements, invited deposits form public assuring lucrative returns; carried away by representations hundreds of investors deposits money. The petitioner issued cheques towards payment of interest and/or return of principal amounts. These cheques were dishonoured. On the basis of a complaint filed by one of the investors alleging embezzlement, misappropriation and siphoning off the funds, above noted case was registered. During investigations it was found that petitioner in pursuance of a criminal conspiracy received public funds, misappropriated them through personal bank accounts, created non-functional firms like Fintra Resorts Limited, Fintra Agro Forests Limited, Fintra Capital Services Limited and Fintra Securities Limited. None of these companies carried out any constructive business activity but they were in fact means to siphon off the funds collected from the investors. The company even did not maintain proper accounts and records of the investors or the invested amounts. During investigations several incriminating documents were recovered and seized by the police. After investigations were completed challan was filed against the petitioner and other co-conspirators. On the basis of the above material on 5-2-2000 charge under section 409 read with section 120B IPC was framed stating that during 1995-97 petitioner Along with others in pursuance of a criminal conspiracy committed breach of trust of Rs. 68 lakhs approx. of Mrs. Poonam Saxena and others and prosecution evidence is being recorded.

3. I have heard learned counsel for the parties and have been taken through record.

4. Learned counsel for the petitioner argued that petitioner is in custody since 14.3.1997 i.e. for the last about 3 years; he was released on interim bail for making arrangement to repay the investors but be could not succeed despite serious endeavor as properties of the company could not be sold because of the order passed in the Company Petition wherein the petitioner was restrained form

disposing of the properties. It was argued that under Section 29 Cr.P.C. the Magistrate can sentence an accused maximum up to three years, the petitioner has already undergone this sentence; that the petitioner cannot be kept detained behind bars for indefinite period without substantial progress int he trial and that the petitioner's fundamental right guaranteed under Article 21 of the Constitution of India for speedy trial is being violated. It was also argued that the petitioner is suffering form severe tuberculosis and was referred to DDU with chest avid, no specialised treatment of the disease is being provided to him; that his condition is deteriorating day by day and that petitioner has two school going daughters aged 6 and 3 years and in the absence of the petitioner their upbringing is being adversely affected.

5. Learned counsel for the States, on the other hand, argued that the allegations against the petitioner are grave; he is guilty of misappropriating, embezzling, siphoning off public funds by creating bogus companies doing no business. Two bail applications of the petitioner were dismissed by this court on 25.1.99 and 7.7.99; that under the order of Hon'ble Company Judge, CBI submitted the report showing the shady activities of M/s. Fintra System duping more than 700 investors and that the petitioner has not made the payment to the investors, despite orders of the Court. The bail application (Crl.M(M) No. 1774/1998) of the petitioner was dismissed on 4th September, 1998 by this Court. The trial court was directed to expeditiously proceed with the trial and it was observed:

'The trial court shall however, endeavor to complete the trial expeditiously. The trial court shall submit a three-monthly report to this court about the progress made during trial. First report shall be submitted by 10th December, 1998.'

6. It was further argued that the petitioner was charged u/ss. 409/120B IPC which is punishable up to life imprisonment. Section 325 Cr.P.C. specifically deals with the situation when a Magistrate thinks that the accused is guilty, but he is not competent to award sufficiently severe punishment, he can record his opinion, submit the proceedings of the case to the Chief Judicial Magistrate so that the accused can be adequately punished.

7. When the matter came up for hearing, despite orders dated 4.9.1998 as noticed above no status report was available, thereforee, fresh status report was called from the trial court, which states that on 7th February, 2000 charge was framed under section 409 read with section 120B IPC against all the accused person; after the charge was framed one of the accused Naresh Tyagi sought time, as he was not able to make his mind whether to plead guilty or not and the matter was adjourned to 13th March, 2000 on which dated the trial court was on leave; on 4th May, 2000 PW-1 was partly examined and the matter was adjourned to 15th May, 2001 on that date learned counsel for State was on leave and the matter adjourned to 31st May, 2000. On that date the accused were not produced form the lock-up, the matter was adjourned to 18th July, 2000. Again on that date the proceedings could nt be held as the file was summoned by the court of Sessions in some petition filed by the accused person and the matter was adjourned to 21st September, 2000. Thereafter when the matter came up for hearing counsel for the accused sought adjournment for cross-examination of PW-1 Poonam Saxena and matter was adjourned to 20th March, 2001 and on hat date counsel for the petitioner despite repeated adjournment did not appear till 1.45 P.M. and the matter was adjourned to 26th March, 2001 for remaining evidence. However, on that date court proceedings could not be conducted because of the power failure. The matter was adjourned to 10th April, 2001. In these circumstances, it cannot be said that delay in the trial occurred solely on account of the lapse of the petitioner.

8. So far as Section 325 Cr.P.C. is concerned it comes into play only when a Magistrate forms an opinion after hearing evidence before the prosecution and accused and finds that the accused in guilty but he ought to receive a punishment more severe than, he is empowered to inflict u/s 29 Cr.PC. Only in that eventuality after recording his opinion he may submit the proceedings and forward the accused to the Chief Judicial Magistrate to whom he is subordinate. The Chief Judicial Magistrate is empowered to examine the parties, recall and re-examine any witness who has already given evidence in the case and may call for and take any further evidence, and thereafter pas such judgment, sentence or order as he thinks fit, and proper.

9. In this case, admittedly, the petition was arrested on 14th March, 1997. He was released on interim bail to enable him to pay to the investors. Having failed to make payment he surrendered. He is in custody for the last about 2-1/2 years. he is a married man having two minor daughters Prosecution is still at the initial stage, it is likely to take quite some time before the prosecution is able to complete its evidence. Only thereafter the Magistrate would be entitled to exercise its discretion under section 325 Cr.PC and not earlier. The Supreme Court in R.D. Upadhyay v. State of A.P. & Ors. : 2000 CriLJ2277 while ordering release of large number of under trail prisoners who were languishing in Tihar Jail for long time observed:

'So far as the cases regarding attempt to murder are concerned, we direct that the cases which are pending for more than 2 years, the undertrials shall be released on bail forthwith to the satisfaction of the respective trial courts. Persons facing trail for Kidnapping, Theft, Cheating, Arms Act, Counterfeiting, Customs, under Section 326 IPC, under Section 324 IPC, Riots and under Section 354 IPC who are in jail for a period of more than one year, shall be released on bail forthwith the satisfaction of the trial courts concerned.'

10. Although Section 409 IPC is not specifically mentioned in the above noted observations yet the punishment prescribed under this Section is the same as prescribed u/s 326 IPC, whereunder the accused can be sentenced to imprisonment for life or imprisonment for term which may extend to 10 years or fine or both.

11. In view of the above, petitioner is ordered to be released on bail on his furnishing a personal bond in the sum of Rs. 10 lacs with two sureties of Rs. 5 lakh each to the satisfaction of the trial court, subject to the conditions (i) that he shall surrender his passport, if any, and will not leave the country. Investigating Agency may inform at the concerned airports (ii) that he shall not make any attempt to contact any prosecution witness directly or indirectly and in any way try to tamper with the evidence or prosecution witnesses in this case or in any other case against him (iii) that he shall intimate his place of residence to the investigating agency as well as to the trial court and if he desires to go out of Delhi he shall take

the permission of the trial court and (iv) that he shall also report at PS Greater Kailash-I once in fortnight between 5.00 PM to 7.00 PM.

12. I would also like to observe that vide orders dated 4th September, 1998 passed by this court in Crl.M(M) 1774/98, bail application of the petitioner was rejected. The trial court was directed to complete the trial expeditiously and to submit a three monthly report and first report was to be submitted by the 10th December, 1998. This direction appears to have been completely ignored. The status report received during the hearing of this petition reveals that approach of the trial court was rather casual. The Additional Sessions Judge, in charge, Patiala House Courts is directed to enquire into the matter as to whether as per orders the reports were submitted or note? If not, who is responsible for the same. The enquiry report be submitted on the administrative side. He may also consider assigning this case and other connected cases to a court where these cases can be taken up expeditiously, if that is not possible in the court where these cases are presently pending.

13. With the above observations petition stands disposed of. Copy of this order be sent to the Additional Session Judge, In-charge, Patiala House, New Delhi.

14. dusty as well.