Vikash Kumar Sinha Vs the State of Jharkhand

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Court : Jharkhand Ranchi

Decided On : Mar-11-2011

Judge : R.K.Merathia.

Acts : Prevention Money Laundering Act, 2002 - Section 4, 45, 3, 4; Indian Penal Code (IPC) - Sections 420, 423, 424, 409, 120B; Prevention of Corruption Act - Sections 7,10,13

Appeal No. : B.A. No. 36 of 2011

Appellant : Vikash Kumar SinhA.

Respondent : The State of Jharkhand.

Advocate for Def. : Mr.A.K.Das, And Mr.Chandrajit Mukherjee.

Advocate for Pet/Ap. : Mr. Y.V. Giri And Ors.

Judgement :

1. This application has been filed for grant of bail in connection with Complaint Case No. 1 of 2009, corresponding to Enforcement Case Information Report- E.C.I.R./02/PAT/09/AD registered under section 4 of the Prevention of Money Laundering Act, 2002 (Money Laundering Act for short).

2. The prayer for bail of the petitioner was earlier rejected by this Court on 24.05.2010 vide B.A. No. 823 of 2010, inter alia observing as follows;- It appears that a complaint has been filed by the Assistant Director- II of Directorate of

Enforcement under section 45 of the Prevention of Money Laundering Act, 2002 before the Special Judge Ranchi (under the Prevention of Money Laundering Act) against the petitioner Vikash Sinha. It further appears that information was filed under the scheduled offences of Prevention of Money Laundering Act, 2002, i.e. under sections 420, 423,424,409 and 120B of the Indian Penal Code as well as under sections 7,10 and 13 of the Prevention of Corruption Act and now for the offence under the Money Laundering Act punishable under section 4 of the Prevention of Money Laundering Act, 2002 against Sri Madhu Koda, Shri Kamlesh Singh, Shri Bhanu Pratap Shahi, Shri Bandhu Tirkey, Shri Binod Sinha, Shri Sunil Kumar Sinha, Shri Vikas Sinha, Shri Sanjay Chaudhary and Shri Dhananjay Chaudhary. The investigation against this petitioner was complete and thereafter complaint was filed before the Special Judge, Ranchi (under the Prevention of Money Laundering Act), stating therein that the investigation of the case against other accused persons was going on. Accordingly, leave, as prayed, for filing further complaint against other accused persons was granted by the Special Judge, Ranchi (under the Prevention of Money Laundering Act). So far as the petitioner is concerned, the learned Special Judge Ranchi (under the Prevention of Money Laundering Act), on the basis of the complaint as well as the materials collected during the course of investigation, took cognizance against the petitioner under section 3 of the Money Laundering Act, 2002 punishable under section 4 of the said Act. The allegations made in the complaint, in short, are that the accused persons in collusion and connivance with each other acquired huge properties. Some of the accused persons were even public servants in the State of Jharkhand. The accused persons accumulated moveable and immoveable properties and assets not only in India but in abroad also. Those properties were acquired otherwise and were not included in their disclosed assets. Their criminal acts indicated misappropriation of public money in the capacity of public servants. One of the co- accused Binod Sinha is the own brother of this petitioner Vikash Kumar Sinha. It is alleged that this petitioner jointly with his brother Binod Sinha acquired the properties and assets; the details of which have been given in the complaint.

The present case is a very sensitive case, in which high profile persons like Ex. Chief Minister of the State is one of the accused. The allegation is that he along with other accused persons in collusion and connivance with each other named in the report have acquired huge moveable and immoveable properties and assets not only in India but in abroad also. The investigation against other accused are still in progress and, therefore, in my view if the petitioner is released on bail, he may certainly try to influence the further investigation and he may try to tamper with the evidence or may try to destroy the evidence.

Considering the gravity of the offence and nature of the crime committed by the accused persons as well as for the reasons stated herein above, in my view the petitioner does not deserve bail. Accordingly, the prayer for bail of the petitioner is rejected and this application is dismissed

3. Against the said order, petitioner moved before Hon'ble Supreme Court vide S.L.P. (Cr) No. 5084 of 2010, which was dismissed on 17.09.2010, with the following order. " Heard learned senior counsel appearing on behalf of the petitioner as well as learned ASG appearing on behalf of Respondent no. 2. The Special Leave Petition is dismissed.

However, liberty is given to the petitioner to renew his bail application after three months before the appropriate court."

4. Mr. Y.V. Giri, learned senior counsel appearing for the petitioner, submitted as follows. The main/C.B.I. case was based on Media Reports. In that case, there was no allegations against the petitioner. In the present case, i.e. E.C.I.R. Case No. 02/2009 registered under the Money Laundering Act, petitioner has been made an accused on the basis of his alleged confession/statements made before the Income tax authorities, about which the petitioner made statement later that such statements/confessions were recorded under coercion. The statements made before the Income tax authorities are relevant for the purpose of taking action under that Act. He relied on 1992 Cr. L.J. 2781__K.T.M.S. Mohammad v. Union of India. The concerned authorities have not taken any action against co-accused persons, against whom, there are similar allegations such as Mr. Bandhu Tirkey and Bhanu Pratap Sahi, who are sitting M.L.As. The rigorous of Section 45 of the Money Laundering Act is applicable to the offences under part A of the Schedule of the Act, whereas no part of the schedule is applicable to the petitioner

on the basis of the offences alleged and therefore the provisions of Cr.P.C. with regard to bail will apply to the petitioner. In the charge-sheet submitted by the C.B.I., the alleged amount involved is about Rs.7 crores covering all the accused persons. Only because petitioner is brother of co-accused Binod Sinha, he has been made an accused in this case. The papers supplied to the petitioner are not readable. The trial is also not progressing. The petitioner was apprehended on 6.11.2009 and since then he is in jail for about 15 months.

In similar circumstances, one Kamlesh Singh was granted bail in Vigilance Case No. 9 of 2009, which is the basis of this case. Shri Laloo Prasad Yadav was also granted bail after he remained in jail for about 6 months vide (2002) 9 SCC 731. One Manoj Singh was also granted bail by this Court, against whom, there were allegations under Money Laundering Act involving 12 crores, on the ground that he has remained in jail for about six months.

The order of the High Court rejecting bail of the petitioner earlier has merged in the said order of the Supreme court, in which petitioner was given liberty to apply for bail after three months by order dated 17.9.2010. Petitioner will cooperate in trial. In these circumstances, petitioner should be enlarged on bail.

5. Mr. A.K. Das, learned counsel appearing for Directorate of Enforcement, vehemently opposed the prayer for bail and submitted as follows. This case was instituted against several accused persons including Shri Madhu Kora, ex Chief Minister, Jharkhand and the petitioner mainly alleging inter alia that during the Chief Ministership of Shri Madhu Kora, he along with co-accused persons acquired huge illegal money (proceeds of crime) through corrupt and illegal means and committed offences, which are covered under schedule of Money Laundering Act, in connivance with his close associates, including petitioner and others. The proceeds of crime so accumulated were invested not only in India but in several other countries so as to project the same as untainted property such as Dubai, Hongkong, Thailand, Singapur and Sweden.

The modus operandi adopted by the accused persons has been explained in detail by Shri S.K. Naredi (Chartered Accountant), who is one of the important witnesses in this case- that some Chartered Accountant/Entry Operators maintained several files of Companies which only exist on paper for providing accommodation entries to the intending persons who want to induct their undisclosed income in the books of accounts of the Company as share capital/unsecured loan.

During investigation, it was found that the petitioner gave about Rs.45 crores to one Mr. B.N. Gupta, an employee of Mr. Naredi and the same was inducted in several such companies running on paper.

By such proceeds of crime, the capital of M/s Emmar Alloys Pvt. Ltd., a paper company of the petitioner was increased and 15% of the share of the Company was transferred in the name of the co-accused- Vijay Joshi, who admitted in his statement that he did not pay any consideration in lieu of acquisition of its share.

The proceeds of crime were rapidly allowed to change hands. About Rs.15 crores was spent on construction/acquisition of industry/ property only. The petitioner for the purpose of laundering the proceeds of crime has become Director in about 8 companies. He was examined under the provisions of Money Laundering Act and Income Tax Act. He admitted his guilt, which finds support from other materials available on record.

Other accused persons are in custody in this case. Petitioner is also deeply and actively involved in the offence. Further investigation is going on in India and in foreign countries. Petitioner cannot complain that the main/CBI case was based on media reports, as on investigation, such reports have been found correct to a great extent. Thus the Enforcement Department had reasonable belief about commission of offence. Some of the accused persons have not been arrested as investigation against them is going on. Referring to section 3 of the Money Laundering Act, he submitted that the petitioner is directly involved in the process and actively connected with the proceeds of crime for projecting it as untainted property. Petitioner may hamper and tamper with the evidences of this case, in which high profile person including ex Chief Minister are involved. He also referred to the order dated 26.10.2010, passed in S.L.P (Crl) Nos. 6995-6999/2010 in the case of CBI, Hyderabad v. B. Ramaraju and others. He lastly submitted that petitioner is not entitled to bail, even on the basis of liberty given by Hon'ble

Supreme Court, as he himself is delaying the trial.

6. It will not be proper for this Court to express any opinion on the said submissions of the parties as it may prejudice them during trial. Prima facie, the submissions made on behalf of the petitioner are not acceptable. During investigation, Media reports have been found substantially correct. Petitioner confessed his guilt during investigation, which finds support from other materials available on record. The judgment of K.T.M.S. Mohammad (supra) relied by the petitioner is of no help to him. It was rendered in altogether different context. The orders granting bail to other accused persons in other criminal cases in the facts and circumstances of those cases by different courts are of no help to the petitioner.

It is true that liberty was given by the Hon'ble Supreme Court to the petitioner to renew his bail application after three months but, from the order sheet of trial court, it appears that petitioner is trying to delay the trial on flimsy grounds. On the other hand, bail is prayed on the ground of the period of detention and the liberty given by Hon'ble Supreme Court.

Prima facie, it is a case of loot and laundering of huge public money in which the petitioner is also actively involved. After hearing the parties at length and considering the entire matter carefully, in my opinion, petitioner does not deserve bail in this case in view of the seriousness of the charges, the materials available in support thereof, and the provisions of Money Laundering Act, as noticed above. Accordingly, this bail application is rejected.