

HIGH COURT OF CHHATTISGARH

Single Bench: Hon'ble Shri Justice Sanjay K. Agrawal

M.Cr.C. (A) No. 1256 of 2014

APPLICANT

Lov Kumar Mishra

Versus

NON-APPLICANT

State of Chhattisgarh

**APPLICATION UNDER SECTION 438 OF THE CODE OF CRIMINAL
PROCEDURE**

Appearance:

Shri Mateen Siddiqui, counsel for the applicant.
Shri D.K. Gwalre, Govt. Advocate for the State.

ORDER
(Passed on 20.01.2015)

(1) Invoking jurisdiction of this Court under Section 438 of the Cr.P.C., the applicant herein has preferred this application for grant of anticipatory bail, as he is apprehending his arrest in connection with Crime No. 27/2010 registered at police station Anti Corruption Bureau, Raipur for the offences punishable under Sections 13(1)(e) & 13(2) of the Prevention of Corruption Act, 1988 (henceforth 'PC Act').

(2) Case of the prosecution, in brief, is that the applicant has amassed wealth of Rs. 2,91,56,508/- disproportionate to his known source of income while working as Assistant Excise Officer and thereby he has committed the aforesaid offence.

(3) Appearing for the applicant, Mr. Mateen Siddiqui, learned counsel would submit that the applicant has not amassed wealth disproportionate to his known source of income as his statement has been recorded

before the Investigating Officer on 16.12.2011 and he has sought information with regard to check period, which has been replied by Anti Corruption Bureau on 18.4.2012 and the applicant and his wife & son are cooperating with the enquiry, which is apparent from the documents filed by the applicant along with the bail petition. He would further submit that the alleged disproportionate property has already been identified by the team of Anti Corruption Bureau; and he is ready and willing to furnish bail bond and he will abide by the conditions imposed upon him; and no custodial interrogation is required as the property said to be disproportionate has been seized.

(4) Appearing for the State of Chhattisgarh, Shri Gwalre, learned Govt. Advocate would submit that the applicant herein is rank defaulter in not co-operating with the investigation as after supplying information in shape of Form A-1, A-2 & A-3 on 27.10.2010 for submitting explanation except on 16.12.2011 applicant has neither appeared before the Investigating Officer nor submitted any explanation till this date. He would further submit that applicant's wife and son are also not co-operating with the trial; and even after noticing them they have not appeared before the Investigating Officer and, therefore, offence which has been registered against the applicant on 21.7.2010, investigation thereof has not reached to an end till date on account of non-cooperating attitude and behaviour on the part of the present applicant and his wife & son and the applicant is absconding to avoid investigation and, as such, he is not entitled to be enlarged on anticipatory bail.

(5) I have heard learned counsel appearing for the parties and perused the case diary of Crime No. 27/2010.

(6) A close and careful perusal of the material available in the case diary of the Crime No.27/2010 would show that offences under Sections 13(1)(e) & 13(2) of the PC Act has been registered against the applicant, finding that he has amassed wealth of ₹ 2,91,56,508/- disproportionate property to his known source of income on 21.07.2010 and he has been served with the Statement Form A-1, A-2 & A-3 in light of provisions of Section 13(1)(e) of the PC Act on 27.7.2010; and the applicant has been given several reminders (eleven in numbers) for submitting explanation and appearing before the Investigating Officer in furtherance of the investigation, but except on 16.10.2011, neither he submitted explanation nor appeared before the Investigating Officer; further the applicant's wife and son, on being called for making certain enquiries, they did not appear and cooperate with the Investigating Officer, this shows that the applicant is not ready and willing to cooperate in the investigation.

(7) In the matter of **Siddharam Satlingappa Mhetre v. State of Maharashtra**¹, their Lordships of the Supreme Court after considering the earlier judgments of the Supreme Court laid down certain factors and parameters to be considered while considering an application for anticipatory bail, which are as under:-

“112. The following factors and parameters can be taken into consideration while dealing with the anticipatory bail:

(i) the nature and gravity of the accusation and the exact role of the accused must be properly comprehended before arrest is made;

(ii) the antecedents of the applicant including the fact as to whether the accused has previously undergone imprisonment on conviction by a court in respect of any cognizable offence;

¹ (2011) 1 SCC 694

(iii) the possibility of the applicant to flee from justice;
(iv) the possibility of the accused's likelihood to repeat similar or [the] other offences;

(v) where the accusations have been made only with the object of injuring or humiliating the applicant by arresting him or her;

(vi) impact of grant of anticipatory bail particularly in cases of large magnitude affecting a very large number of people;

(vii) the courts must evaluate the entire available material against the accused very carefully. The court must also clearly comprehend the exact role of the accused in the case. The cases in which the accused is implicated with the help of Sections 34 and 149 of the Penal Code, 1860 the court should consider with even greater care and caution because over implication in the cases is a matter of common knowledge and concern;

(viii) while considering the prayer for grant of anticipatory bail, a balance has to be struck between two factors, namely, no prejudice should be caused to the free, fair and full investigation and there should be prevention of harassment, humiliation and unjustified detention of the accused;

(ix) the court to consider reasonable apprehension of tampering of the witness or apprehension of threat to the complainant.

(x) frivolity in prosecution should always be considered and it is only the element of genuineness that shall have to be considered in the matter of grant of bail and in the event of there being some doubt as to the genuineness of the prosecution, in the normal course of events, the accused is entitled to an order of bail.

113. Arrest should be the last option and it should be restricted to those exceptional cases where arresting the accused is imperative in the facts and circumstances of

that case. The court must carefully examine the entire available record and particularly the allegations which have been directly attributed to the accused and these allegations are corroborated by other material and circumstances on record.”

(8) Thus, grant of anticipatory bail in a serious offence like corruption, parameters are required to be satisfied; and further anticipatory bail can be granted only in exceptional circumstances where the court is prima facie of the view that the applicant has falsely been enroled in the crime and would not misuse his liberty and cooperating with the trial.

(9) In the matter of **Nimmagadda Prasad Vs. Central Bureau of Investigation**², their Lordships of the Supreme Court has laid down the following parameters while considering the application for grant of bail, which states as under:-

“24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public /State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “*reasonable grounds for believing*” instead of “*the evidence*” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima

² (2013) 7 SCC 466

facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.”

(10) In the matter of **State of Gujarat Vs. Mohanlal Jitamalji Porwal**³, their Lordships of the Supreme Court while considering a request of the prosecution for adducing evidence, *inter alia*, observed as under:-

“ 5.. The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white-collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest.”

(11) In **State of Maharashtra through CBI, Anti Corruption Branch, Mumbai Vs. Balakrishna Dattatrya Kumbhar**⁴, their Lordships of the Supreme Court has held that corruption is violation of human right and observed as under:-

“ Corruption is not only a punishable offence but also undermines human rights, indirectly violating them, and systematic corruption, is a human rights’ violation in itself, as it leads to systematic economic crimes.”

(12) Further, in the matter of **Nimmagadda Prasad** (supra), their Lordships of the Supreme Court has held that economic offence is a

³ (1987) 2 SCC 364

⁴ (2012) 12 SCC 384

grave offence affecting the economy of the country as a whole and observed as under:-

“23.Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fibre of the country’s economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole.

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deeprooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.”

(13) Thus taking into consideration the facts & circumstances of the case; and nature and gravity of the offence; and further taking into consideration the conduct of the applicant in not co-operating in investigation despite several letters and reminder and thereby installing the investigation and keeping in mind the binding observations of their Lordships of the Supreme Court in cases of **Balakrishna Dattatrya Kumbhar & Nimmagadda Prasad** (supra) that economic offences are grave offence affecting the economy of the country as a whole and serious repercussions on the development of the country and in view of the fact that corruption is a really a human rights violation specially right to life liberty, equality and non discrimination, and it is an enormous obstacle to the realization of all human rights, this Court is not inclined to extend the privilege of anticipatory bail to the applicant.

(14) Accordingly, the application for grant of anticipatory bail deserves to be and is accordingly dismissed.

Judge

Head Note

English

(1) Petitioner is an accused for the offences under Section 13(1) (a) & 13(2) of the Prevention of Corruption Act, 1988 is not entitled for anticipatory bail.

HINDI

(1) याचिकाकर्ता जो कि धारा 13 (अ) एवं 13 (2) भ्रष्टाचार निरोधक अधिनियम, 1988 के अन्तर्गत अभियुक्त है, अग्रिम जमानत का हकदार नहीं होगा।

(Amit Dubey)
Private Secretary