

Mahesh Kumar Poddar vs The State Of Jharkhand on 13 May, 2022

Author: Sanjay Prasad

Bench: Sanjay Prasad

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IN THE HIGH COURT OF JHARKHAND AT RANCHI
Cr. Appeal (S.J.) No. 433 of 2021

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Mahesh Kumar Poddar Appellant
Versus
The State of Jharkhand Respondent

Present
HON'BLE MR. JUSTICE SANJAY PRASAD

For the Appellant : Mr. Jitendra Shankar Singh, Advocate
For the State : Mr. Shailendra Kumar Tiwari, Spl.P.P.
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ORDER

I.A. No. 3494 of 2022 C.A.V. on 12.05.2022 Pronounced on 13/05/2022 Heard Mr. Jitendra Shankar Singh, learned Counsel appearing on behalf of the appellant and Mr. Shailendra Kumar Tiwari, learned counsel for the State.

2. The instant I.A. No. 3494 of 2022 has been filed by the appellant for suspension of sentence and for grant of bail to the appellant, during pendency of the Criminal Appeal.

3. This Criminal Appeal has been filed on behalf of the appellant challenging the judgment of conviction dated 26.08.2021 and order of sentence dated 31.08.2021 passed by learned Special Judge (Cyber Crime), East Singhbhum, Jamshedpur in Cyber Crime Case No. 26 of 2020 alongwith Cyber Crime No. 47 of 2020 whereby the appellant- Mahesh Kumar Poddar along with four others Sonu Kumar Mahato, Pradip Mazumdar, Mantosh Kumar Poddar and Ritesh Kumar have been convicted for the charges for committing the offences punishable under Sections 420/468/471/419 of the Indian Penal Code and Sections 66-C and 66-D of the I. T. Act and have been sentenced to undergo R. I. for a period of seven(7) years and to pay fine of Rs. 5,00,000/- each for the offences under Section 420 of the Indian Penal Code and in default of fine, further sentenced to undergo R. I. for a period of Six (6) months.

The appellant has also been sentenced to undergo R. I. for a period of seven(7) years and to pay fine of Rs. 5,00,000/- for the offences under Section 468 of the Indian Penal Code and in default of fine, further sentenced to undergo R. I. for a period of Six (6) months. The appellant has been sentenced to undergo R. I. for a period of three (3) years and to pay fine of Rs. 3,00,000/- for the offences

under Section 471 of the Indian Penal Code and in default of fine, further sentenced to undergo R. I. for a period of three(3) months. The appellant has also been sentenced to undergo R. I. for a period of three (3) years and to pay fine of Rs. 1,00,000/- for the offences under Section 120-B read with 420/468/471/419 of the Indian Penal Code and in default of fine, further sentenced to undergo R. I. for a period of two (2) months. The appellant has also been sentenced to undergo R. I. for a period of three (3) years and to pay fine of Rs. 1,00,000/- for the offence under Section 66- C of the I. T. Act and in default of fine, further sentenced to undergo R. I. for a period of two (2) months and has further been sentenced to undergo R. I. for a period of three (3) years and to pay fine of Rs. 1,00,000/- for the offence under Section 66-D of the I. T. Act and in default of fine, further sentenced to undergo R. I. for a period of two (2) months.

All the sentences have been directed to run concurrently, however learned Court below has specifically ordered that the fine imposed under the different Sections shall be paid separately. The period of custody already undergone shall be set off.

4. It has been submitted by the learned counsel for the appellant that the judgment of conviction and order of sentenced passed by the learned Court below are illegal and not sustainable in the eye of law. It is submitted that the learned Court below has not appreciated the evidence properly. It is submitted that the appellant is not named in the FIR and has been arrested on mere suspicion and his name has come in this case on the basis of confessional statement of co-accused namely Pradip Mazaumdar. However, nothing adverse has been found against the appellant. It is submitted that the appellant had denied during his statement recorded by the learned Court below under Section 313 of the Cr. P. C. that no fraudulent transaction of fraudulent transfer has taken place. It is submitted that the learned Court below committed grave illegality by convicting him merely on the ground that the appellant could not proof as to how a sum of Rs. 4,71,698/- between 10.04.2019 to 30.06.2019 and Rs. 6,60,657/- between 01.10.2019 and 31.12.2019 and Rs. 10,52,682/- between 01.07.2019 and 30.09.2019 totalling Rs. 21,85,037/- has been credited and the amount of more than Rs. 20,000,00/- had been withdrawn. It is submitted that it is the duty of the prosecution to prove the availability of the said Rs. 21,85,037/- in the account of the appellant, which prosecution has failed to do so. It is submitted that learned Court below has wrongly relied upon the Exts. i.e. bank statements with signature marked as Ext. 26 and 26/1 respectively. It is further submitted that the appellant was neither connected with Pradip Mazumdar nor Sonu Kumar Mahato nor Mantosh Kumar Poddar, rather the appellant has been convicted on mere suspicion and for having failed to prove the availability of 21,85,037/- in his bank account. It is submitted that no victim has come forward to allege anything against the appellant. It is further submitted that the police has falsely instituted four cases against the appellant for committing cyber crime after arrest of the appellant in the present case.

It is further submitted that eleven (11) witnesses have been examined during trial and in which several witnesses i.e. P.W.

-1- Bikash Uraon, P.W.-2- Sanjay Kumar Sinha, P.W.-3-Sailendra Kumar Sahu, P.W-4-Alok Mukhi, P.W.-5-Samu Ram Sandil, P.W.- 6- Laxmi Sandil and P.W.-8- Graygori Toppo have not stated anything against the appellant. It is submitted that P.W.-7- Damyanti Sandil is one of the victim of

this case, however, she has also not alleged and stated anything against the appellant. It is submitted that P.W.-10, Santu Kumar and P.W.-11, Santosh Poddar are the seizure list witnesses on the recovery of documents and articles from co-convicts Sonu Mahto and Mantosh Kumar Poddar. It is submitted that P.W.-9, Upendra Kumar Mahato is the I.O. of this case and only on the basis of evidence of P.W.-9, Upendra Kumar Mahato, i.e. the I.O. of this case, the appellant has been convicted. It is submitted that even the I.O. during his cross-examination has stated at para-45 that he has seized neither ATM Cards, Aadhar Cards nor any mobile phones nor any SIM from the possession of the appellant. It is submitted Ext. 26 and 26/1 respectively are the statement of bank account of the appellant, which has been denied by him. It is submitted that the Branch Manager of the I.C.I.C.I. Bank, Bistupur Branch, Jamshedpur whereas the appellant is alleged to have opened the bank account, has not been examined by the prosecution. It is submitted that P.W.-9, Upendra Kumar Mahato i.e. I.O. has admitted in para-65 of his cross-examination that no victim has come forward to depose against the appellant and others. It is submitted that burden of proof lies upon the prosecution to prove the case of cheating and committing cyber crime against the appellant. It is submitted that the prosecution has tried to show that the appellant has got five criminal antecedent but all such cases have been wrongly instituted. It is submitted that Section 66-C and 66-D of the I.T. Act are not applicable on the facts and in the circumstances of the case and the learned Court below has wrongly convicted the appellant under the aforesaid charges. It is further submitted that even the prosecution has failed to prove the charges under Section 420/468/471/120B I.P.C. read with Section 420/468/471/419 of the Indian Penal Code. It is submitted that offence under Section 66-C and 66-D of the I.T. Act are bailable in light of the provisions of Section 77 (3) of the I.T. Act. It is submitted that there is no presumption under the provisions of I.T. Act to rebut the charges and duty is cast upon the prosecution to prove the charges. It is submitted that appellant is in custody since 06.06.2020 i.e. for about two years and as such he may be enlarged on bail.

5. On the other hand, learned counsel for the State has opposed the prayer for bail. It is submitted that the appellant- Mahesh Kumar Poddar along with four others namely Sonu Kumar Mahto, Pradip Mazumdar, Mantosh Kumar Poddar and Ritesh Kumar have been rightly convicted by the learned Court below. It is submitted that co-convict, Sonu Kumar Mahato was having found dubious bank account, which was verified and proved by Sanjay Kumar Sinha, Branch Manager, Indian Bank, Jamshedpur and thereafter Pradip Mazumdar, Mantosh Kumar Poddar were arrested and the name of the appellant Mahesh Kumar Poddar has come in this case on the basis of confessional statement of co-convict Pradip Mazumdar. It is submitted that co-convict Pradip Mazumdar is the mastermind of the entire crime and the appellant- Mahesh Kumar Poddar happens to be the associate of the said Mantosh Kumar Poddar and Pradip Mazumdar and Sonu Kumar Mahato and it is evident from the confessional statement of co-convicts Pradip Mazumdar and Sonu Kumar Mahato marked as Ext.-14 and Ext. 11 respectively. It is submitted that series of documents i.e. 16 ATM Cards, nine passbooks of different banks, five mobile phones, 43 PAN cards, 16 SIM cards, cheque books, various I.D. proofs etc. have been recovered from the possession of co-convict Sonu Kumar Mahato and Pradip Mazumdar respectively and all these above documents fully established the involvement of the present appellant - Mahesh Kumar Poddar along with four others namely Sonu Kumar Mahato, Pradip Mazumdar, Mantosh Kumar Poddar and Ritesh Kumar in cheating the general people. It is submitted that the appellant during his statement recorded under Section 313 of the Cr. P. C., has also admitted that the bank account belongs to him, however the appellant could

not give proper reply from which source sum of Rs. 21,85,037/- had come from the different accounts holders and which was credited in the account of the appellant on various dates through online mode from various districts all over the country. It is submitted that P.W.-2, Sanjay Kumar Sinha and P.W.-9, Upendra Kumar Mahato, I.O., had fully supported the prosecution case. It is submitted that P.W.-9 is the I.O. of this case and who has brought on record Ext. 26 and 26(1) respectively, which are the bank account statements of the appellant and duly certified under Section 65-B of the Indian Evidence Act, which go to prove the guilt.

It is submitted that the appellant has got several criminal antecedents and he is involved in cyber crimes in five cases of cyber crime and two-three cases were earlier instituted and two cases have been instituted now against him. It is submitted that P.W.-9, Upendra Kumar Mahato, I.O. has stated that sum of more than Rs. Twenty (20) Lakh had been withdrawn by the appellant. It is submitted that the appellant has failed to show as to how the said amount of Rs. 21,85,037/- has been received in his bank account and as such prayer for bail of the appellant is fit to be rejected.

6. Perused the Lower Court Records of this case and considered the submissions of both the sides.

7. The present appeal has been heard along with Criminal Appeal (S.J.) No. 493 of 2021, however, the order is being passed separately today i.e. on 13.05.2022.

8. It transpires from the FIR that in the light of E-mail received from the Bank Manager, Noida Branch on 27.01.2020 and on suspicion by one of the bank employee i.e. P.W.-4, Alok Mukhi, the co-convict, Sonu Kumar Mahato was apprehended and he was interrogated on 06.02.2020 the bank account of one Sonu Kumar Mahato was freezed. Thereafter Sonu Kumar Mahato was taken into custody. Thereafter, on the basis of confessional statement of Sonu Kumar Mahto, the name of other co-accused Pradip Mazumdar and Mantosh Kumar Poddar had come in this case and there after confessional statement of both the co-convicts namely Pradip Mazumdar and Mantosh Kumar Poddar was recorded on 07.02.2022 vide Ext. 14 and Ext. 16 and who have named the appellant and his associates.

9. It transpires from the impugned judgment passed by the learned Court below that the name of the appellant has come on the basis of confession of co-convict Mantosh Kumar Poddar. From going through the evidence of P.W.-9, Upendra Kumar Mahato, I.O. of this case, it transpires that the appellant has been arrested on 06.06.2020.

10. During cross-examination of the I.O., I. O has not been confronted by the appellant that as to how Rs. 21,85,037/- has been credited and the amount of more than Rs. 20,000,00/- had been withdrawn. Silence of the accused under Section 313 of the Cr. P. C. may be fatal to him, if he fails to rebut specific evidence of availability of Rs. 21,85,037/- brought before him and if the accused failed to rebut the presumption of availability of Rs. 21,85,037/- and the amount of more than Rs. 20,000,00/- had been withdrawn, which may go against him.

11. It also transpires from perusal of the Lower Court Records that the Co-ordinate Bench in B. A. No. 10504 of 2020 vide order dated 06.01.2021 directed the learned Court below to conclude the

trial within six months from the date of receipt of the copy of the order.

12. The Trial Court has meticulously dealt with all the documents and Exhibits and also the Material Exhibits, which is appreciated by this Court also.

13. It also appears to be a case of negligence on the part of two districts of police due to which two persons namely Ritesh Kumar and Mahesh Kumar Poddar could not be arrested as Senior Police officials had not properly supervised and had not instructed the I.O. during investigation. I.O. i.e. P.W. 9 should have been instructed to make proper investigation under the supervision of Superintendent of Police or D.I.G. or any other superior authority. I. O. has stated during his cross-examination at para-78 that several passbooks were opened in the fake name and the victims were not examined by the police. So far as other victim, from whose account, amounts were debited, could not be examined. There was lack of co-ordination between the police department and I.T. Department dealing in cyber crime matters.

14. The appellant has admitted his bank account during his statement under Section 313 of the Cr. P. C. and therefore, withdrawal of more than of Rs. Twenty (20.00) lakh, from his bank account, which has been proved by Ext. 26 and 26/1 respectively, will show that the appellant has got information of availability of the said amount. The appellant has credited more than sum of Rs. 21,85,037/- (Rs. Twenty One Lakh Eighty Five Thousand and Thirty Seven only) from the people, which is a huge amount.

15. It further transpires that four (4) other cases i.e. Cyber Crime Case No. 01/2020, 02/2020, 05/2020 and 28/2020 are pending apart from this case against the appellant, therefore, allowing the bail to the appellant at this stage may also affect the trials and the Appellant may tamper and influence the evidence of the witnesses of other cyber crime cases.

16. In view of the judgment reported in 2019 (14) SCC 438 in the case of Prahlad Versus State of Rajasthan, it transpires that the silence of the accused persons and mere denial of the accused persons in such a matter wherein he is expected to come out with an explanation, leads to an adverse inference against him while being examined under Section 313 of the Cr. P.C. may leads to an adverse inference against the accused person, then the Court may draw adverse inference against the accused person.

The appellant- Mahesh Kumar Poddar could not rebut the evidence of receiving Rs. 21,85,037/- in his bank account and he has admitted during his examination under Section 313 of the Cr. P. C. that account number 008901563677 of I.C.I.C.I. Bank, Bistupur Branch, Jamshedpur belongs to him and as such the learned Court below has convicted after taking into consideration his answer given under Section 313 of the Cr. P. C. and which has been supported by the judgment reported in 2019 (14) SCC 438 in the case of Prahlad Versus State of Rajasthan.

17. Considering the facts and circumstances of the case, I am not inclined to enlarge the appellant on bail at this stage and as such the prayer for bail of the Appellant is rejected.

However, the appellant may renew his prayer for bail after completing half of the sentence.

18. Accordingly, I.A. No. 3494 of 2022 stands rejected and disposed of.

(Sanjay Prasad, J.) Kamlesh/ N.A.F.R.