

Dukhishyam Benupani, Asstt. Director, ... vs Arun Kumar Bajoria on 28 November, 1997

Equivalent citations: AIR 1998 SUPREME COURT 696, 1998 (1) SCC 52, 1998 AIR SCW 361, 1997 (7) SCALE 258, 1997 CRIAPPR(SC) 396, 1998 SCC(CRI) 261, (1998) 1 RECCRIR 354, (1998) 1 CURCRIR 153, (1997) 7 SCALE 258, (1998) 36 ALLCRIC 150, (1998) 91 COMCAS 413, (1997) 4 CRIMES 299, (1998) MAD LJ(CRI) 246, (1997) 10 SUPREME 62, (1998) 1 ALLCRILR 81, (1998) 1 EASTCRIC 492

Bench: M.K. Mukherjee, K.T. Thomas

CASE NO. :

Appeal (crl.) 1116 of 1997

PETITIONER:

DUKHISHYAM BENUPANI, ASSTT. DIRECTOR, ENFORCEMENT DIRECTORATE (FERA)

RESPONDENT:

ARUN KUMAR BAJORIA

DATE OF JUDGMENT: 28/11/1997

BENCH:

M.K. MUKHERJEE & K.T. THOMAS

JUDGMENT:

JUDGMENT 1997 Supp(5) SCR 566 The Judgment of the Court was delivered by THOMAS, J. Leave granted.

When the Enforcement Directorate (under Foreign Exchange Regulation Act, for short 'FERA') moved me High Court of Calcutta challenging an order passed by a sessions judge granting anticipatory bail to the respondent, a Division Bench of the High Court made the position worse for the Enforcement Directorate (for short the Directorate). It necessitated the Directorate to move this court with the special leave petition.

The officials of the Directorate wanted to interrogate the respondent in connection with recovery of certain documents and other materials in a raid conducted in the residential premises of the respondent. So they issued summons to the respondent under Section 40 of FERA to appear before the officials at New Delhi. But the respondent, instead of appearing in response to the summons, approached the High Court with a writ petition challenging the summons and praying for interim orders restraining the officials from proceeding with the summons. A single judge of the High Court however, refused to grant any interim relief despite repeated motions made by the respondent for

that purpose. While the said writ petition was pending the respondent filed an application in the City Sessions Court Calcutta for an order under Section 438 of the Code of Criminal Procedure (for short the Code). The City Sessions Judge granted ad-interim bail order on 19-3-1997 in favour of the respondent with a condition that he should report to the office of the Directorate at Calcutta on every Monday. Appellant challenged the said order before the High Court in revision and a single judge of the High Court disposed of the revision directing the City Sessions Court to hear both parties and to take a final decision on merits. The City Sessions Judge thereupon heard the parties and passed final order on 25-4-1997 in favour of the respondent. The aggrieved appellant moved the Calcutta High Court under Section 439(2) of the Code for cancellation of the said bail order. A Division Bench of the High Court (R. Bhattacharyya and M.A. Chowdhury. JJ) has passed the impugned order on 20-6-1997 the operative part of which reads thus:

"Persuaded by the aforesaid circumstances, we direct the department to interrogate the accused at the Calcutta office, 8A Lindsay Street, 2nd Floor Calcutta-700 087 available from the summons. (No.T3/CP/ 179/ Cal/97/MLA/4852 dated 13.6.97) issued by the Enforcement Directorate But the petitioner must not be put on arrest till the applications pending disposal are decided. The petitioner is to attend on Monday. Tuesday, Wednesday, Thursday and Friday i.e. on 23rd June 1997 to 27th June 1997 at 8A Lindsay street and shall report to Shri M.L. Acharya Chief Enforcement Officer at 2 O clock on the aforesaid dates. The interrogation is to continue until 5 O'clock for each day. The prayer for further interrogation is left open which will be considered on hearing the parties Hearing to continue as before." Despite several postings thereafter and repeated requests made by the appellant for modification of the said order the Division Bench did not do anything in the matter and hence the appellant approached this court.

According to the appellant the pre-arrest bail order passed by the Sessions Court and the subsequent order passed by the High Court would very badly affect the effectiveness and utility of the inquiry which the Directorate has to conduct as enjoined by the statutory provisions into the serious allegations of FERA violations glaringly observed against the respondent- Learned counsel produced the files concerning the FERA violation cases against the respondent in which the magnitude of the amount involved is indicated. Appellant pointed out that the City Sessions Judge as well as the Division Bench of the High Court have not given any consideration to certain serious aspects involved. One such aspect is that this respondent was caught earlier in a serious case of FERA violation involving a whopping sum of 37 crores of rupees and he was arrested in connection with that case on 16-3-1990 and he is continuing on bail. A complaint was filed against him on 2-9-1994 before the Chief Metropolitan Magistrate, Calcutta for offence under Section 96 of FERA and the case is still pending. Another aspect is, the High Court of Calcutta had earlier refused to stop proceedings against the respondent in the present case in spite of repeated motions made by him in that behalf. The next is that when the respondent failed to get any relief from the High Court he adopted an alternative strategy by filing yet another writ petition challenging the constitutional validity of

the provisions of FERA and in that writ petition he again moved for interim reliefs but a single judge of the High Court after hearing the respondent declined to grant any relief to him. Yet another fact pointed out is that respondent was successfully eluding from grilling interrogatories by adopting dilatory and contumacious tactics.

Learned counsel for respondent defended both orders on the premises that the respondent presented himself for being interrogated on many days subsequent to the High Court order and nothing incriminating was elicited from him so far and that the respondent is a sick person entitled to a pre- arrest bail order.

It seems rather unusual that when the aggrieved party approached the High Court challenging the order passed by a subordinate court the High Court made the position worse for the aggrieved party. The officials of the Directorate are now enjoined by the Division Bench from arresting the respondent and the time and places for carrying out the interrogations were also fixed by the Division Bench, Such kind of supervision on the enquiry or investigation under a statute is uncalled for. We have no doubt that such type of interference would impede the even course of enquiry or investigation into the serious allegations now pending. For what purpose the Division Bench made such interference with the functions of the statutory authorities, which they are bound to exercise under law, is not discernible from the order under challenge. It is not the function of the court to monitor investigation processes so long as such investigation does not transgress any provision of law. It must be left to the investigating agency to decide the venue, the timings and the questions and the manner of putting such questions to persons involved in such offences A blanket order fully insulating a person from arrest would make his interrogation a mere ritual [vide State rep by the CBI v. Anil Sharma, JT (1997) 7651]-

This court has pointed out time and again that considerations to be weighed with the court while dealing with a prayer for pre-arrest bail order are materially different from a post-arrest bail application, [vide Pokar Ram v. State of Rajasthan & ors., AIR (1985) SC 969, State rep by the CBI v. Anil Sharma, JT (1997) 7 651 and The State of Andhra Pradesh v. Bimal Krishna Kundu & Anr, JT (1997) 8 382.

The argument of the learned counsel for the respondent that he made himself available for interrogation for several days after being armed with an order preventing his arrest is not much relevance now because that is not an aspect which can be taken advantage of by the respondent in this case. Similarly the contention that respondent is a sick person is not enough to claim pre-arrest bait order. Hence we are not inclined to go into the dispute whether respondent is suffering from any such health condition.

That apart how could the City Sessions Judge have ignored the fact that the High Court of Calcutta has repeatedly refused to grant any relief to the respondent in spite

of different motions made by him regarding the very accusation against him. Of course appellant has a contention that respondent has suppressed those facts in the application filed before the City Sessions Court for anticipatory bail. An endeavour has been made before us by the respondent to show that in fact he had mentioned about it in the application for anticipatory bail though by some lapse it did not find a place in the copy of the application furnished to the opposite party. Even if we assume that there was no sinister motive for the respondent to keep such facts out of the said copy what we are now concerned about is that the City Sessions Judge has not considered those facts at all. We have no doubt that the Division Bench of the High Court has gone ostensibly wrong in passing the impugned order. When we perused the files concerning the allegations against the respondent (which the Directorate had made available to us) we strongly feel that any further loss of time would further impair the effectiveness of the inquiry and/or investigation into those allegations. Considering the nature and seriousness of the allegations as well as largeness of the amount involved we have no doubt that the order granted by the City Sessions judge should not remain alive. We are, therefore, constrained to stretch the arms of the residual powers of this court to deal with the said order also.

In the result we set aside the impugned order passed by the Division Bench of the Calcutta High Court and we also annul the pre-arrest bail order dated 25-4-1997 passed by the City Sessions judge. The petition filed by the appellant before the Calcutta High Court for cancellation of the bail order will stand disposed of in the above terms. Appeal is accordingly allowed.

Appeal allowed.