

Y.S.Jagan Mohan Reddy vs C.B.I on 9 May, 2013

Equivalent citations: AIR 2013 SUPREME COURT 1933, 2013 (7) SCC 439, 2013 AIR SCW 2800, AIR 2013 SC (CRIMINAL) 1286, 2013 (3) AJR 168, 2013 CRILR(SC MAH GUJ) 699, 2013 (3) SCC(CRI) 552, 2013 (7) SCALE 7, 2013 CRILR(SC&MP) 699, (2013) 3 CRILR(RAJ) 699, 2013 (4) KCCR 335 SN, (2013) 2 ALLCRIR 2244, (2013) 3 RECCRIR 108, (2013) 1 HINDULR 363, 2013 CALCRILR 1 418, (2013) 1 CAL HN 645, (2013) 1 CAL LJ 580, (2013) 1 CALLT 628, (2013) 2 DMC 745, (2013) 55 OCR 825, (2013) 3 CURCRIR 10, (2013) 7 SCALE 7, (2013) 3 DLT(CRL) 98, (2013) 3 ALLCRILR 543, 2013 (2) ALD(CRL) 509

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Bench: P. Sathasivam, M.Y. Eqbal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

1 CRIMINAL APPEAL NO. 730 OF 2013

(Arising out of S.L.P. (Crl.) No. 3404 of 2013)

Y.S. Jagan Mohan Reddy

.... Appellant(s)

Versus

Central Bureau of Investigation

.... Respondent(s)

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J U D G M E N T

P.Sathasivam, J.

- 1) Leave granted.
- 2) This appeal is directed against the final judgment and order dated

24.01.2013 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petition No. 8750 of 2012 in R.C. 19(A)/2011-CBI- Hyderabad, whereby the High Court dismissed the petition filed by the appellant herein for grant of bail.

3) The only question posed for consideration is whether the appellant- herein has made out a case for bail.

Brief facts:

4) (a) On the orders of the High Court of Andhra Pradesh in Writ Petition Nos. 794, 6604 and 6979 of 2011 dated 10.08.2011, the Central Bureau of Investigation (in short "the CBI"), Hyderabad, registered a case being R.C. No. 19(A)/2011-CBI-Hyderabad dated 17.08.2011 under Section 120B read with Sections 420, 409 and 477-A of the Indian Penal Code, 1860 (for short 'IPC') and Section 13(2) read with Section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988 (in short "the PC Act") against Y.S. Jagan Mohan Reddy (A-1), Member of Parliament and 73 others.

(b) The appellant-Y.S. Jagan Mohan Reddy was named as an accused at Sl.

No. 1 in the FIR dated 17.08.2011 (after the chargesheet was framed, he was arrayed as A-1 and hereinafter, he will be referred to as A-1).

(c) During investigation, it was revealed that Y.S. Jagan Mohan Reddy (A-

1), son of Late Dr. Y.S. Rajasekhara Reddy, the then Chief Minister of Andhra Pradesh, has adopted several ingenious ways to amass illegal wealth which resulted in great public injury. The then Chief Minister of the State abused his public office to the benefit of his son Y.S. Jagan Mohan Reddy (A-1). Since May, 2004, A-1 started floating a number of companies including M/s Jagathi Publications Pvt. Ltd., which was originally incorporated as a private limited company on 14.11.2006 and later converted into a public limited company on 12.01.2009. At the relevant time, Y.S. Jagan Mohan Reddy (A-1) was designated as the Authorised Signatory to operate the Bank accounts of the said Company. He was appointed as a Director and Chairman with effect from 21.06.2007. It is alleged that A-1 floated M/s Jagathi Publications Pvt. Ltd. with an objective of conducting media business with the ill-gotten wealth. Most of the shareholders were alleged to be the benamis of Y.S. Jagan Mohan Reddy (A-1). Further, as a quid pro quo to these investments, the benefits were received by various investors including the companies/individuals from the decisions of the State Government in allotment of lands for Special Economic Zones (SEZs), contracts for irrigation projects, special relaxations/permissions for real estate ventures, mines etc. It is further revealed that Y.S. Jagan Mohan Reddy (A-1) laundered the bribe money by routing it through various individuals and

companies and getting investments made by them in his companies at a high premium.

(d) On 31.03.2012, 23.04.2012 and 07.05.2012, the CBI filed first, second and third charge sheet(s) respectively before the Special Judge for CBI Cases, Hyderabad and the appellant was arrayed as A-1 in all the charge sheets. The Principal Special Judge for CBI Cases took cognizance of the charge sheet dated 31.03.2012 which was numbered as CC No. 8 of 2012. The appellant was arrested on 27.05.2012 for his involvement and complicity in the case and presently, he is in judicial custody. On 29.05.2012 and 30.05.2012, the Principal Special Judge for CBI Cases took cognizance of second and third charge sheet(s) which were numbered as CC Nos. 9 and 10 of 2012 respectively.

(e) On 29.05.2012, the appellant filed Crl. M.P. No. 1055/2012 in CC No. 8 of 2012 before the Court of the Special Judge for CBI Cases at Hyderabad for grant of regular bail under Section 437 of the Code of Criminal Procedure, 1973 (in short 'the Code'). The Special Judge, by order dated 01.06.2012, dismissed his application for bail.

(f) The CBI filed Criminal Petition Nos. 4743 and 4744 of 2012 before the High Court for the remand of A-1 for a period of 5 days. The High Court, by order dated 02.06.2012, allowed the petitions and remanded A-1 to the custody of the CBI from 03.06.2012 to 07.06.2012. By further orders dated 08.06.2012 in Crl. M.P. No. 4785 of 2012 in Criminal Petition No. 4743 of 2012, the custody was extended to a further period of 2 days.

(g) Being aggrieved, the appellant moved the High Court for enlarging him on bail in Criminal Petition No. 5211 of 2012. The High Court, taking note of serious nature of the offence and having regard to personal and financial clout of the appellant (A-1) and finding that it cannot be ruled out that witnesses cannot be influenced by him in case he is released on bail at this stage, by impugned order dated 04.07.2012, dismissed his bail application.

(h) Being aggrieved by the orders dated 02.06.2012 and 04.07.2012, the appellant preferred two special leave petitions being Nos. 5901 and 5902 of 2012 before this Court. This Court, by order dated 09.08.2012, issued notice in SLP (Crl.) No. 5902 of 2012 and dismissed SLP (Crl.) No. 5901 of 2012.

(i) On 13.08.2012, the CBI filed fourth charge sheet in the Court of Principal Special Judge for CBI Cases, Hyderabad which was numbered as CC No. 14 of 2012.

(j) This Court, on coming to know that the investigation is continuing in connection with 7 matters, dismissed the special leave petition being SLP (Crl.) 5902 of 2012 by order dated 05.10.2012 with a direction to the CBI to complete the investigation as early as possible and to file a consolidated charge sheet on the remaining 7 issues. This Court also directed the appellant to renew his prayer for bail before the trial court on completion of the investigation by the CBI.

(k) On 16.11.2012, the appellant filed Crl. M.P. No. 1938 of 2012 before the Special Judge for CBI Cases, Hyderabad, seeking default/statutory bail. On the same day, the appellant filed Crl. M.P. No. 1939 of 2012 in CC No. 8 of 2012 before the Special Judge for CBI Cases, Hyderabad, seeking

regular bail. By orders dated 28.11.2012 and 04.12.2012, the Special Judge rejected the bail applications filed by the appellant herein in Crl. M.P. No. 1938 of 2012 and Crl. M.P. No. 1939 of 2012 respectively.

(l) The appellant preferred Criminal Petition No. 8576 of 2012 before the High Court for grant of bail which came to be dismissed on 24.12.2012. Being aggrieved, the appellant preferred Criminal Petition No. 8750 of 2012 before the High Court. The High Court, by order dated 24.01.2013, dismissed the petition filed by the appellant herein.

(m) Being aggrieved by the order of the High Court, the appellant herein has preferred this appeal by way of special leave.

5) Heard Mr. Harish N. Salve, Mr. Mukul Rohatgi and Mr. K.V. Vishwanathan, learned senior counsel for the appellant-accused and Mr. Ashok Bhan and Mr. Mukul Gupta, learned senior counsel for the respondent- CBI.

6) The CBI has filed a counter affidavit dated 06.05.2013, sworn by a senior officer, namely, Deputy Inspector General of Police and Chief Investigating Officer in RC No. 19(A)/2011-CBI-HYD and has furnished various information such as allegations against the appellant, companies/persons involved, investigation conducted so far and progress of the investigation with regard to certain companies/persons. During the course of hearing, the CBI also circulated the Status Report in respect of the FIR being No. 19(A)/2011-CBI-HYD regarding 7 issues mentioned in the order of this Court dated 05.10.2012. Learned senior counsel appearing for the appellant, by drawing our attention to various materials/details including the fact that the appellant is in custody nearly for a period of 1 year and many persons alleged to have been involved in those transactions are not in custody and no steps have been taken by the CBI for their arrest, submitted that the appellant may be enlarged on bail after imposing appropriate conditions.

7) In order to appreciate the rival contentions, particularly, the stand of the CBI, it is useful to refer the earlier order passed by this Court on 05.10.2012 which reads as under:

Heard Mr. Gopal Subramaniam, learned senior advocate appearing for the petitioner at some length.

Mr. Mohan Parasaran, learned ASG appearing on behalf of the CBI, submitted before us a report from which it appears that the investigation is still going on in connection with seven matters. In paragraph 9 of the report, it is stated as under:

“.....The matters which are pending investigation also involved investigation into various serious economic offences involving hundreds of crores of rupees. The major matters which are now under investigation relating to conspiracies distinctly involving the following entities which by themselves are independent to each other and are, therefore, distinct conspiracies.

i) Sandur Power Co. Ltd.

ii) Grant of mining lease to Bharti Cements/Raghuram Cements which are companies none other than own companies of A1, Mr. JMR.

iii) Penna Cements and Group companies

iv) Dalmia Cements

v) India Cements

vi) Investment through paper companies based in Kolkata and Mumbai, popularly known as suit case companies.

vii) Indu Projects, Lepakshi knowledge Hub The amounts involved and which is subject matter of investigation in the above cases as per estimates exceed Rs.3000 crores.” (emphasis in the original) Mr. Parasaran stated that the CBI is making investigation without wasting any time and he assured the Court that the investigation will be completed as early as possible and on completion of the investigation the CBI shall submit one final charge-sheet.

On hearing counsel for the parties and on going through the report submitted by the CBI, we are not inclined to interfere in the matter at this stage.

The special leave petition is, accordingly, dismissed.

It will be, however, open to the petitioner to renew his prayer for bail before the trial court on completion of the investigation by the CBI on the issues as indicated above and submission of the final charge-sheet.

In case, such a prayer is made, the Court shall consider the prayer for bail independently, on its own merits, without being influenced by the dismissal of the special leave petition.

Put up after two weeks.”

8) Mr. Ashok Bhan, learned senior counsel for the CBI, by pointing out the penultimate paragraph in the order dated 05.10.2012, i.e., “It will be, however, open to the petitioner to renew his prayer for bail before the trial Court on completion of the investigation by the CBI on the issues as indicated above and submission of the final charge-sheet”, submitted that in view of the fact that the investigation is still continuing in respect of the transaction(s) with certain companies/persons, the present application for bail is not maintainable.

9) It is relevant to note that in the order dated 05.10.2012, this Court noted the statement made by learned ASG, who appeared for the CBI, that the investigation relating to conspiracies distinctly

involving 7 entities which by themselves are independent to each other requires further time. According to learned senior counsel for the CBI, they require 4-6 months' time to complete the investigation in respect of the 7 entities as mentioned in the order dated 05.12.2012 and to file a charge sheet. In support of the above claim, the CBI pointed out various instances from the counter affidavit as well as from the Status Report justifying their stand for the dismissal of the bail application.

10) In the Status Report, the CBI has assured that the investigation is being carried out expeditiously as directed by this Court. It is stated that among 7 issues, the CBI has completed the investigation with respect to M/s Dalmia Cements and consequently filed the charge sheet in the Court of Special Judge for CBI Cases, Hyderabad on 08.04.2013. According to the CBI, presently, the investigation is progressing with regard to other 6 issues also and the CBI is in the final stages of investigation with respect to the following, viz., M/s India Cements, Penna Cements and Investments through Kolkata companies. It is also assured to this Court that the CBI is likely to file charge sheet/final reports in the above said three issues shortly.

11) The CBI in its Status Report has elaborated the progress with regard to the investigation in the remaining issues which are as under:-

M/s Dalmia Cements (Bharat) Ltd.

(a) The investigation has revealed that M/s Dalmia Cements (Bharat) Ltd.

invested an amount of Rs. 95 crores into M/s Raghuram Cements Ltd. represented by Y.S Jagan Mohan Reddy. In quid pro quo to the investments, A-1, through his influence over his father Late Dr. Y.S. Rajasekhara Reddy facilitated the grant and transfer of mining lease to the extent of 407 hectares in Kadapa District of Andhra Pradesh to M/s Dalmia Cements. The CBI has highlighted the amount involved and the facilities provided by the father of the appellant. It is further highlighted in the Status Report that the searches were conducted by the Income Tax Department, New Delhi at the offices of M/s Dalmia Cements (Bharat) Ltd. and the residential premises of their employees.

(b) It is also highlighted that as per the pre-arranged agreement between Y.S. Jagan Mohan Reddy (A-1), V. Vijay Sai Reddy (A-2) and Puneet Dalmia, M/s Dalmia Cements (Bharat) Ltd. sold of their stake in M/s Raghuram Cements Ltd. to M/s PARFICIM, France, for a total consideration of Rs. 135 crores out of which, an amount of Rs. 55 crores was paid to Y.S. Jagan Mohan Reddy (A-1) between 16.05.2010 and 13.06.2011, in cash through hawala channels, and the details of the said payments were found in the material seized by the Income Tax Department, New Delhi.

(c) The CBI has further alleged that M/s Dalmia Cements (Bharat) Ltd. have returned the alleged sale proceeds to Y.S. Jagan Mohan Reddy (A-1) in cash through hawala channels which clearly establish that the initial payment of Rs. 95 crores was only illegal gratification for the undue benefits received by them from the Government of Andhra Pradesh and was not genuine investments. It is further submitted that the charge sheet has already been filed with regard to the same on 08.04.2013 against A-1 and 12 others under various sections of the IPC and the PC Act. M/s Sandur

Power Company Ltd.

(a) Regarding the investigation relating to M/s Sandur Power Company Ltd., it is stated by the CBI that Y.S. Jagan Mohan Reddy (A-1) was the Director of this Company from 16.06.2001 to 11.01.2010. M/s Sandur Power Company Ltd. was incorporated on 23.10.1998 by M.B. Ghorpade and subsequently, Y.S. Jagan Mohan Reddy (A-1) joined the company during June 2001 along with the Board of Directors, viz., Harish C. Kamarthy and J.J. Reddy. It is alleged by the CBI that the Company is closely held by Y.S. Jagan Mohan Reddy (A-1). The CBI also highlighted various share transactions amounting to Rs. 124.60 crores with two Mauritius based companies, viz., M/s 2i Capital and M/s Pluri Emerging Company by M/s Sandur Power Company Ltd. It is projected by the CBI that the above said amount is of A-1 which was routed through the Mauritius based companies. It is also highlighted that the role of Nimmagadda Prasad (A-3), who is currently under judicial custody is also being investigated for the same. Vijay Sai Reddy (A-2), along with Y.S. Jagan Mohan Reddy (A-1), was the brain behind this conspiracy inasmuch as A-2 had floated fictitious companies in Chennai so as to enable round tripping or routing monies into M/s Sandur Power Company Ltd. from India and foreign countries through companies falsely created in Chennai as well as in certain foreign countries.

(b) It is also pointed out by the CBI that notice has also been issued to one Maiank Mehta, who is suspected to be the person who handled the routing of money of Y.S. Jagan Mohan Reddy (A-1) and notice has been issued for his presence in India for examination and interrogation. The said person is presently based in Hong Kong and is refusing to come to India citing frivolous reasons. It is suspected that he is being influenced by Y.S. Jagan Mohan Reddy (A-1) and Vijay Sai Reddy (A-2) which amply prove that the witnesses are being influenced by these persons in this case.

Grant of Mining Lease to Bharti Cements/Raghuram Cements:

It is pointed out by the CBI that investigation is under progress regarding grant of mining lease of limestone to Bharti Cements/Raghuram Cements which are the companies owned by Y.S. Jagan Mohan Reddy (A-1). It is claimed by the CBI that during the period under review, they have collected nearly 400 documents running into thousands of pages from various Departments/Banks including Oriental Bank of Commerce, Jubilee Hills, Hyderabad, Koramangala, Bangalore, Head Office, Gurgaon etc. for disbursement of loan of Rs. 200 crores violating the bank guidelines and rules. It is also stated that the investigation disclosed the payment of illegal gratification of Rs. 30 crores to Y.S. Jagan Mohan Reddy (A-1) by Nimmagadda Prasad (A-3) for the wrongful gain obtained by A-3 from the Government of Andhra Pradesh in connection with awarding a project consisting of development of two Sea Ports and an Industrial Corridor as VANPIC Project and falsification of documents to cover up the said payment etc. M/s Indu Projects Ltd. (M/s Lepakshi Knowledge Hub Pvt. Ltd. and M/s Indus Tech Zone Pvt. Ltd.) The CBI has pointed out that the investigation is in progress in respect of the above said group of companies. In the Status Report, the CBI has highlighted a number of details about the nexus of the appellant along with those companies. Since the investigation is still under progress

in respect of those companies, we are not highlighting all those details furnished by the CBI in the Status Report.

M/s India Cements Ltd.

The CBI has highlighted the investigation relating to M/s India Cements Ltd. and the various amounts exchanged between the parties. In respect of the above, according to the CBI, they had made illegal quid pro quo investments to the tune of Rs.140 crores into the group companies of Y.S. Jagan Mohan Reddy (A-1) and had received several benefits in the form of permissions granted for utilization/additional quantity of water from Kagna and Krishna Rivers and lease of land. It is also pointed out that the investigation in the case is almost complete except few more crucial witnesses have to be examined. The CBI also pointed out the details of investigation relating to investment through paper companies based in Kolkata and Mumbai, popularly known as suit case companies. Since investigation is on a half way, we are not referring all those details mentioned in the Status Report.

12) It is further pointed out that during investigation, a total number of 140 witnesses including IAS officers and concerned Ministers have been examined and 352 documents were collected. According to the CBI, out of these, some more crucial witnesses have to be examined.

13) Learned senior counsel appearing for the appellant pointed out that after the order dated 05.10.2012, the CBI is not justified in prolonging the same just to continue the custody of the appellant. It was also highlighted that even according to the CBI, several Ministers and IAS officers are involved, but no one has been arrested so far. As far as those allegations are concerned, it is the claim of the CBI that considering the huge magnitude of transactions, various beneficiaries, companies/persons involved with A-1 and his associates, the CBI is taking effective steps for early completion of the same. Though learned senior counsel for the appellant submitted that in view of non-compliance of Section 167 of the Code the appellant is entitled to statutory bail, in view of enormous materials placed in respect of distinct entities, various transactions etc. and in the light of the permission granted by this Court in the order dated 05.10.2012, we are unable to accept the argument of learned senior counsel for the appellant.

14) On going into all the details furnished by the CBI in the form of Status Report and the counter affidavit dated 06.05.2013 sworn by the Deputy Inspector General of Police and Chief Investigating Officer, Hyderabad, without expressing any opinion on the merits, we feel that at this stage, the release of the appellant (A-1) would hamper the investigation as it may influence the witnesses and tamper with the material evidence. Though it is pointed out by learned senior counsel for the appellant that since the appellant is in no way connected with the persons in power, we are of the view that the apprehension raised by the CBI cannot be lightly ignored considering

the claim that the appellant is the ultimate beneficiary and the prime conspirator in huge monetary transactions.

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

16) 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.

17) Taking note of all these facts and the huge magnitude of the case and also the request of the CBI asking for further time for completion of the investigation in filing the charge sheet(s), without expressing any opinion on the merits, we are of the opinion that the release of the appellant at this stage may hamper the investigation. However, we direct the CBI to complete the investigation and file the charge sheet(s) within a period of 4 months from today. Thereafter, as observed in the earlier order dated 05.10.2012, the appellant is free to renew his prayer for bail before the trial Court and if any such petition is filed, the trial Court is free to consider the prayer for bail independently on its own merits without being influenced by dismissal of the present appeal.

18) With the above observation, the appeal is dismissed.

.....J. (P. SATHASIVAM)J. (M.Y. EQBAL) NEW
DELHI;

MAY 9, 2013.
