

Nimmagadda Prasad vs C.B.I., Hyderabad on 9 May, 2013

Equivalent citations: 2013 AIR SCW 3795, 2013 (7) SCC 466, 2013 CRI. L. J. 3449, AIR 2013 SC (CRIMINAL) 1821, (2013) 7 SCALE 25, (2013) 2 DLT(CRL) 400, (2013) 82 ALLCRIC 393, (2013) 55 OCR 833, (2013) 127 ALLINDCAS 166 (SC), (2013) 3 RECCRIR 175, (2013) 2 CURCRIR 430, (2013) 4 ALLCRILR 755, (2013) 2 ALD(CRL) 1011, 2013 (3) SCC (CRI) 575, 2013 (2) KLT SN 157 (SC), 2013 (4) KCCR SN 417 (SC), AIR 2013 SUPREME COURT 2821, (2013) 2 UC 1310

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Bench: P. Sathasivam, M.Y. Eqbal

REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

1 CRIMINAL APPEAL NO. 728 OF 2013

(Arising out of S.L.P. (Crl.) No. 9706 of 2012)

Nimmagadda Prasad

.... 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

08.10.2012 passed by the High Court of Judicature of Andhra Pradesh at Hyderabad in Criminal Petition No. 6732 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) 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.

5) The appellant-Nimmagadda Prasad was named as an accused at Sl. No. 12 in the FIR dated 17.08.2011 (after the chargesheet was framed, he was arrayed as A-3 and hereinafter, he will be referred to as A-3). It is further seen that during the course of investigation, the appellant was arrested on 15.05.2012 for his involvement and complicity in the case and presently, he is in judicial custody.

6) After filing two successive bail applications before the trial Court which ended in dismissal, the appellant moved the High Court for enlarging him on bail on 06.09.2012 by filing Criminal Petition No. 6732 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-3) and finding that it cannot be ruled out that witnesses cannot be influenced by A-3 in case he is released on bail at this stage and also taking note of the submission of the Special Public Prosecutor that the investigation of the case is still continuing even after filing of the charge sheet(s), by impugned order dated 08.10.2012, dismissed his bail application.

7) Heard Mr. Harish N. Salve, learned senior counsel for the appellant and Mr. Ashok Bhan, learned senior counsel for the respondent-CBI. Contentions:

8) After taking us through the entire materials commencing from the filing of FIR dated 17.08.2011, contents of charge sheet dated 13.08.2012, orders of the trial Court rejecting the bail applications twice, the stand taken by the CBI before the trial Court and the High Court, Mr. Salve, learned senior counsel, vehemently contended that the appellant is entitled to an order of bail from this Court. He also submitted that in

view of the inconsistent stand taken by the CBI at every stage and taking note of the fact that the appellant is in jail since 15.05.2012, by imposing appropriate conditions, the appellant may be released on bail.

9) Mr. Ashok Bhan, learned senior counsel for the CBI, by placing reliance on all the materials filed by the prosecution pointed out that the appellant, along with others, is involved in a serious economic offence.

He also submitted that the appellant (A-3) himself is a beneficiary of land worth several crores of rupees and properties in association with Jagan Mohan Reddy (A-1), who enriched himself for more than 40,000 crores by the influence of his father who was the then Chief Minister of Andhra Pradesh. He also submitted that even after filing of the charge sheet on 13.08.2012, in view of further investigation under Section 173(8) of the Code of Criminal Procedure, 1973 (in short "the Code"), the CBI is looking into all the aspects of investment of the appellant in M/s Indus Projects and its group of companies, has collected a number of files from different departments of the Government of Andhra Pradesh, Banks/NBFCs and other private companies/individuals. He finally concluded that in view of the Status Report dated 30.04.2013 filed by the DIG of Police, CBI, Hyderabad, stating that a further period of 4-6 months is required for completing the investigation under Section 173(8) of the Code, it would not be proper to release him on bail at this juncture.

10) We have carefully considered the rival submissions and perused all the relevant materials relied on by both the sides.

Discussion:

11) In the Status Report dated 30.04.2013, it is stated that the allegations in the FIR against the appellant is that the Government of Andhra Pradesh awarded VANPIC (Vodarevu and Nizampatnam Port Industrial Corridor) Project to the present appellant (A-3) and allotted more than 15,000 acres of land in Prakasam and Guntur Districts to the companies promoted by the appellant in violation of all the laws, rules and norms and granted several concessions. As a quid pro quo, the appellant invested in the following companies, viz., M/s Carmel Asia Holdings Pvt. Ltd., M/s Bharathi Cements, M/s Jagathi Publications Pvt. Ltd., M/s Silicon Builders, M/s Sandur Power Company etc. belonging to Y.S. Jagan Mohan Reddy, s/o the then Chief Minister, late Dr. Y.S. Rajasekhara Reddy.

12) It is also brought to our notice that the investigation into the above said allegations revealed that during the period between 2006 and 2009, the Government of Andhra Pradesh, led by the then Chief Minister late Dr. Y.S. Rajasekhara Reddy extended many undue favours to the appellant by abusing his official position and thereby, an extent of 18878 acres was allotted in his favour, in return, A-3 paid illegal gratifications amounting to Rs. 854.50 crores to Y.S. Jagan Mohan Reddy (A-1) and his group of companies for exercising personal influence over his father, the then Chief Minister of Andhra Pradesh. It is the claim of the CBI that illegal gratifications

were paid in the guise of investments/share application money to give them corporate colour in order to escape the criminal liability.

13) It is also the claim of the prosecution that the appellant acted as a conduit to Y.S. Jagan Mohan Reddy (A-1) to channelize the bribe amounts paid by other individuals/companies as a quid pro quo for the undue benefits received by him from the Government of Andhra Pradesh led by late Dr. Y.S. Rajasekhara Reddy.

14) It is also pointed out that based on the available oral and documentary evidence, a charge sheet was filed against the appellant and other accused (A-1 to A-14) on 13.08.2012 before the Court of Principal Special Judge for CBI cases, Hyderabad which was numbered as CC No. 14 of 2012. Thereafter, according to the CBI, based on various materials, further investigation under Section 173(8) of the Code is still continuing in respect of other aspects of the case.

15) It is highlighted by the CBI that during further investigation in CC No. 14 of 2012, the role of A.J. Jagannathan and Dr. Khater Massaad, who represented on behalf of the Government of Ras Al Khaima (RAK) – UAE has to be ascertained in view of various dubious transactions revealed. It is the stand of the CBI that A.J. Jagannathan, alleged Advisor to the Government of RAK-UAE had been a Director on the Board of Directors of M/s Indus Projects Ltd., along with the present appellant. According to the CBI, the further investigation has revealed that Rs. 140 crores, out of Rs. 525 crores, the money of the appellant flown from Mauritius based companies into India under Automatic Route have been diverted and invested in M/s Jagathi Publications Pvt. Ltd. and M/s Bharathi Cements Corporation Pvt.

Ltd., hence, the source of this money ought to be ascertained and investigated which is likely to take some time.

16) According to the CBI, the appellant (A-3) had been a Director in M/s Indus Projects Ltd., which was awarded many projects/contracts by the Government of Andhra Pradesh during the period between 2004 and 2009.

17) The CBI has also projected the order dated 05.10.2012 passed by this Court in Special Leave Petition (Criminal) No. 5902 of 2012 filed by Y.S. Jagan Mohan Reddy (A-1), directing A-1 to apply for bail only after completion of the investigation in seven issues including Indus Projects Ltd. and Lepakshi Knowledge Hub Private Ltd. Mr. Ashok Bhan, by drawing our attention to the said order submitted that those directions are also applicable to Nimmagadda Prasad (A-3) - appellant herein, who was also a Director in M/s Indus Projects Ltd. which is under active investigation.

18) From the status report, it is also brought to our notice that during the year 2008-09, the Government of Andhra Pradesh alienated 8,844 acres of land in Ananthapur District in favour of M/s Lepakshi Knowledge Hub Private Limited, a newly incorporated company, with more exemptions/subsidies at a cost ranging between Rs. 50,000 to Rs. 1,75,000 per acre. It is also

highlighted that files were processed despite serious objections by the Finance Department about (i) the financial implications of the proposed concessions proposed on the State exchequer, (ii) company's financial standing; lack of credibility in terms of their past experience of the fledging company incorporated in July, 2008; and (iii) absence of safety clauses in the proposed Memorandum of Agreement (MoA) to resume land in case of violation/failure to implement the project. However, the Government of Andhra Pradesh led by late Dr. Y.S. Rajasekhara Reddy went ahead and entered into the MoA and alienated the said land by passing various Government Orders between 22.09.2008 and 21.02.2009.

19) In the status report, it is also mentioned that M/s Indus Projects Limited suddenly came into picture claiming to be the holding company of M/s Lepakshi Knowledge Hub Private Limited and availed loans amounting to Rs. 790 crores from different banks/NBFCs by mortgaging about 4,397 acres of land. It is the assertion of the prosecution that all the funds were misappropriated by M/s Indus Projects Ltd. for their real estate activities and other business needs. According to the CBI, so far, the investigation has revealed that at least Rs. 88 crores out of the above funds have come back to M/s Indus Projects Ltd. through hawala channels/fake work orders/forged RA bills. It is the grievance of the CBI that the investigation so far has revealed that after more than four and a half years, the project has failed to take off and no job has been generated so far. It is also the allegation of the CBI that the Banks/NBFCs adopted an average market value of Rs. 20 lakh per acre while disbursing loans to M/s Indus Projects Ltd. which were given to the company at a price ranging between Rs. 50,000 to Rs. 1,75,000 lakh per acre. According to the CBI, the value of 8,844 acres of land dishonestly alienated to a private company would be around Rs. 1,768 crores approx. Though they secured loan documents from various banks, yet they are awaiting similar documents from Punjab National Bank, Bank of India, UCO Bank, Kotak Mahindra Bank and State Bank of India.

20) In the status report, it is also claimed that the CBI has to examine various persons from different Government Departments, Banks/NBFCs, private companies/individuals involved in diversion/misappropriation of funds, employees of M/s Indus Projects Ltd., M/s Lepakshi Knowledge Hub Pvt. Ltd., and their group companies to ascertain the facts related to the case.

21) In addition to the same, it is also highlighted that M/s Indus Projects Ltd., who did not fulfil the technical and financial criteria, submitted an application stating that they would develop the project through a consortium consisting of IDFC (Financial Member) and M/s Embassy Group (Technical Member) and would form a Special Purpose Vehicle (SPV). In this regard, it is pointed out that M/s Indus Techzone Pvt. Ltd., projected as SPV, is fully owned by M/s Indus Projects Ltd. While allotting 250 acres of prime land at Shamshabad, near new International Airport of Hyderabad, several exemptions such as stamp-duty and registration expenses, subsidized power, all external infrastructures up to the boundary of SEZ, tax exemptions/holiday were provided under ICT Policy and SEZ Act, 2005 justifying that the project would create 45,000 new jobs. In addition, land worth about Rs. 1 crore per acre was given at a price of Rs. 20 lakh per acre. It is further pointed out that the said project has to be completed within five years of allotment of land which ended in the year 2011-2012, however, except developing a skeleton structure of about 7.50 lakh SFT against 45 lakh SFT, M/s Indus Techzone Pvt. Ltd. has failed to develop the project and has not created any new employment so far.

22) It is also pointed out that M/s Indus Techzone Pvt. Ltd., availed Rs. 175 crores of loans by mortgaging about 75 acres of land which is shown to have been spent for the development of project. The investigating agency is of the opinion that a major chunk of the funds was diverted/misappropriated by way of fake work orders/RA bills.

23) No doubt, Mr. Salve, learned senior counsel for the appellant pointed out the different stand of the CBI from court to court, he also commented upon the reasoning and the ultimate conclusion of the trial Judge, namely, the Principal Special Judge for CBI Cases, Hyderabad for rejecting the bail application of the appellant. It is true that after highlighting the stand taken by the prosecution as well as the right of the accused and taking note of the various aspects, the trial Judge was of the view that if the appellant is enlarged on bail, he will influence the witnesses, since some of them are on his pay rolls, and thereby investigation will suffer a set back. Even if it is accepted that the statements have been recorded from those employees, as rightly pointed out by the counsel for the CBI, the matter is not going to end with their statements.

24) Mr. Salve, after taking us through various documents/correspondences from the Government of Ras Al Khaima submitted that in view of the contents of the same and the specific stand of the Government of Andhra Pradesh, there is no basis for the claim made by the CBI. Though we were taken through all those details, it is not proper for this Court to make a comment about the acceptability or otherwise at this juncture and those materials ought to be considered only at the trial.

25) As pointed out by Mr. Ashok Bhan, learned senior counsel for the CBI, after filing of the charge sheet on 13.08.2012, in view of further materials, the CBI started investigation which is permissible under Section 173(8) of the Code to look into the aspects of the involvement of the appellant in M/s Indus Projects Ltd. and its group companies, viz., M/s Lepakshi Knowledge Hub Private Ltd. as well as M/s Indus Techzone Private Limited. In view of the same, undoubtedly, the investigating agency may require further time to collect all the materials, particularly, the nexus of the appellant with those concerns and the appellant being the beneficiary of the quantum of the amount secured. In the course of the arguments, it is also brought to our notice by learned senior counsel for the CBI that a sitting Minister in-charge of the Ports had nexus with those transactions. Considering all these developments, taking note of various details furnished in the Status Report dated 30.04.2013, we are of the view that though the appellant is in custody for nearly 11 months, at the same time, the claim of the premier investigating agency cannot be underestimated. As pointed out by the CBI, if ultimately it is established, it is a grave economic offence of alienating prime lands to selected private companies/individuals under the garb of development using deceptive means resulting in wrongful ownership and control of material resources detrimental to the common good. Further, in order to establish all those events, it is the claim of the CBI that documents have to be obtained from different banks, other private companies/individuals, who facilitated the said diversion of funds. In addition to the same, public servants involved in processing of government files have to be examined apart from private persons/companies. A higher officer of the investigating agency, namely, DIG of Police, CBI assured this Court that further investigation is being carried out at a faster pace and is expected to be completed within six months.

26) Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In *State of Gujarat vs. Mohanlal Jitmalji Porwal and Anr.* (1987) 2 SCC 364 this Court, while considering a request of the prosecution for adducing additional 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....”

27) 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 it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima 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.

28) 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.

29) Taking note of all these aspects, without expressing any opinion on the merits of the case and also with regard to the claim of the CBI and the defence, we are of the opinion that the appellant cannot be released at this stage, however, we direct the CBI to complete the investigation and file charge sheet(s) as early as possible preferably within a period of four months from today. Thereafter, 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.

30) With the above direction, the appeal is dismissed.

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

MAY 9, 2013.
