

Subhash Chand Jain vs Central Bureau Of Investigation on 29 October, 2021

Author: Chandra Dhari Singh

Bench: Chandra Dhari Singh

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IN THE HIGH COURT OF DELHI AT NEW DELHI

CRL.A. 312/2021

SUBHASH CHAND JAIN

Through: Mr. Mir Akhtar Hussai

versus

CENTRAL BUREAU OF INVESTIGATION Respond

Through: Mr. Nikhil Goel, SPP with Mr. V

Mathew, Advocate

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

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29.10.2021

(THROUGH VIDEO CONFERENCING)

CRL.M.A. 17050/2021

Exemption allowed, subject to just exceptions.

The application stands disposed of.

1. The instant appeal under Section 374 Cr.P.C read with Section 482 Cr.P.C against the judgment dated 26.08.2021 and order on sentence dated 14.09.2021 in CC No. 174/2019 passed by learned Special Judge (PC Act), CBI-03, Rouse Avenue District Courts, New Delhi, by which the appellant was convicted under Section 120 B IPC and sentenced to undergo 1 year RI and fine of Rs.20,000/-, in default of fine SI for 2 months. The appellant was also convicted under Section 420/468/471 IPC and sentenced to undergo 3 years RI and fine of Rs.40,000/-, in default of fine SI for 6 months. The appellant was also convicted under Section 13(1)(D) r/w Section 13(2) PC Act and sentenced to undergo 3 years RI and fine of Rs.40,000/-, in default of fine SI for 6 months. The sentences were directed to run concurrently.

2. Learned counsel appearing for the appellant submitted that appellant is the accused no. 2 and the RC in the present case was registered on the complaint of one Sh. R.C. Shivana, the then SI, CBI/ACB on 29.09.2006 alleging misappropriation of Rs.1,22,913/- by S/Sh. S.C. Jain, Manager, P.K. Mathur, AE, Yad Ram, JE, Dinesh Chand Sharma, Head Draft Man and Tripan Singh Negi, Beldar by entering into a criminal conspiracy amongst themselves and with other private persons

during the year 2004-05 to defraud the NDMC in the matter of execution and award of electrical works. As per the RC the appellant alongwith others awarded the work by placing fake/forged documents and payment was released to the contractors concerned without ensuring that the related work was executed or not. It is also alleged in the complaint that the work was being allotted fraudulently, tenders were bogus and no work was done but the payment was released to the bogus contractors and the same was divided between the accused and the contractors.

3. It is contended that the CBI Court has not taken into consideration while passing the impugned order that there were no quotations which were claimed to be false, however certain estimates supplied by the contractors were claimed to be false. It is contended on behalf of the appellant that the quotations were used only to fix the basic price of the tender. Hence, no order was placed nor sought on the basis of the said quotations.

4. It is further contended that the CBI Court has committed grave illegality by calling the quotations as valuable security in contravention to the definition of valuable security as per Section 30 which in turn would make it cognizable under Section 420 IPC. Learned counsel further submitted PW-5 has not deposed anything against accused 1, 2 and 5 but has vaguely attempted to involve accused No.3 in his statement and has proved that none of the accused was involved in any of the offences. It is, therefore, prayed that the instant appeal may be allowed.

5. Admit.

6. Trial Court record be summoned.

7. List in due course.

CRL.M.(BAIL) 1288/2021

8. The instant application has been filed by the appellant/applicant under Section 389 Cr.P.C. read with Section 482 Cr.P.C. for suspension of sentence during the pendency of the appeal.

9. Issue notice. Notice accepted by Mr. Nikhil Goel, SPP for CBI.

10. Learned counsel appearing on behalf of the appellant submitted that by virtue of order dated 14.09.2021 learned trial Court was pleased to suspend the sentence of the appellant for a period of two month to enable him to file the statutory appeal against the impugned judgment and order. It is also submitted that the appellant deposited the entire fine imposed by the trial Court. Copy of the receipt is also appended with the appeal as Annexure A-4. It is further submitted that the appellant undertakes to abide by any condition imposed by this Court while granting bail.

11. Per Contra, learned SPP appearing on behalf of the CBI opposed the application for the suspension of sentence as awarded by the Court below.

12. Heard learned counsel for the appellant/applicant as well as learned SPP appeared on behalf of the CBI.

13. For the reasons stated in the application and in such circumstances referred above, I am persuaded to accept the plea of the appellant/applicant for suspension of the substantive order and sentence dated 14.09.2021 passed by the Special Judge.

14. I make it clear and goes without saying that any observations touching merits of the case, are purely for the purpose of deciding the question of grant of bail till the final disposal of instant criminal appeal and shall not construed as an expression of final observation in the main matter.

15. As a result, the application succeeds and is hereby allowed.

16. Taking into consideration the facts and circumstances of the case as also the arguments advanced and contentions made in the application, the applicant is ordered to be enlarged on bail on his executing personal bond of Rs.25,000/- (twenty five thousand Rupees Only) with solvent surety of like amount to the satisfaction of the Trial Court subject to the conditions as follows:-

(a) he shall under no circumstances leave India without prior permission of the Court;

(b) he shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case.

(c) he shall provide his mobile number and keep it operational at all times;

(d) he shall drop a PIN on the Google map to ensure that his location is available.

(e) he shall commit no offence whatsoever during the period he is on bail.

17. In the meantime, the substantive order and sentence dated 14.09.2021 passed by the leaned Trial Court/Special Judge shall remain suspended till the final disposal of instant criminal appeal.

18. The application stands disposed of.

CHANDRA DHARI SINGH, J OCTOBER 29, 2021 Aj