

Bhoori Singh vs Cbi on 5 August, 2020

Author: Anu Malhotra

Bench: Anu Malhotra

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ CRL.A. 355/2020 & CRL.M.(BAIL) 7666/2020

BHOORI SINGH

.....Applicant

Through: Mr.Manish Singh, Mr.Nusrat Hossain,
Mr.Nitesh Singh & Mr.Abhishek
Bhardwaj, Advocates.

Versus

CBI

.....Respondent

Through: Mr. Ripudaman Bhardwaj, SPP with SI
Pushpa Pathak, IO.

HON'BLE MS. JUSTICE ANU MALHOTRA
ORDER

% 05.08.2020
(hearing through Video Conferencing)
CRL.M.(BAIL) 7666/2020

The nominal roll has been received from the Superintendent Central Jail No.-2, Tihar, New Delhi which indicates that the applicant has been incarcerated for a period of three months and one day with the unexpired portion of the sentence being 4 years 8 months and 29 days as on 30.07.2020.

The response has also been filed on behalf of the CBI qua CRL.M.(BAIL) 7666/2020 filed on behalf of the applicant/appellant seeking suspension of the sentence imposed vide impugned order on sentence dated 24.06.2020 of the Court of the learned Special Judge, Rouse Avenue District Courts, Delhi in FIR No. RC-DAI-2016-A-0015 vide which the appellant had been convicted for the offences punishable under Section 7 and 13(2) R/W 13(1)(d) of the P.C. Act, 1988 and was sentenced to undergo rigorous imprisonment for a period of five years and to pay a fine of Rs.25,000/- for the offence punishable under Section 7 of the Prevention of Corruption Act and in default of payment of fine to undergo simple imprisonment for a period of three months and to further undergo rigorous imprisonment for a period of five years for the offence punishable under Section 13(1)(d) r/w Section 13(2) of the P.C. Act and to pay a fine of Rs.25,000/- and in default of payment of fine to undergo simple imprisonment for a period of three months and the sentences have been directed to

run concurrently with the benefit under Section 428 of the Cr.P.C to be given to the appellant.

On behalf of the appellant/applicant, it has been strenuously urged that there are several discrepancies in relation to the alleged occurrence itself, in as much as, there are variant versions that the complainant has put forth in relation to the alleged demand of gratification as well as in view of the averments made by the complainant in relation to the demands having allegedly been made by the SHO concerned of a sum of Rs.50,000/- as informed by the applicant/appellant as well as the submission of the applicant that the sum of Rs.49,000/- was allegedly handed over by the complainant, PW-7 Narender Kumar to accused/appellant Bhoori Singh in the presence of the SHO of the Police Station.

There are contentions that have been raised on behalf of the applicant that the complainant had stated that he had lodged the complaint to the SHO, PS Karawal Nagar against one SI Sandeep Kumar and had also thereafter, submitted a written complaint against SI Sandeep Kumar and SHO, PS Karawal Nagar to the Joint Commissioner of Police regarding his false implications in various false criminal cases at PS Karawal Nagar but that he had not submitted any complaint regarding any demand or bribe against the present applicant.

It has further been submitted on behalf of the applicant that even in relation to the place and manner of preparation of hand washes whereas, there is variation in the testimonies of the complainant i.e. PW-7 Narender, PW-8 Saurabh Dhaka, PW-10 Kailash Paswan and PW-15 SP Singh in relation to as to where the money was allegedly kept by the accused i.e. the appellant herein and where the money had been taken out by the complainant. Inter alia it has been submitted on behalf of the applicant/appellant that there is a variation also in relation to the place where the hand wash of the GC Notes was taken with variations in the testimonies of the prosecution witnesses in relation thereto as well.

It has further been submitted on behalf of the applicant that though undoubtedly, the learned Trial Court has not taken into account the voice examination report of the CFSL which is exhibited as Ex.PW14/A having observed vide paragraph 71 of the impugned judgment to the effect that the same was not taken into consideration for the reason that the CFSL, New Delhi has admittedly not been notified by the Central Government under Section 79A of the Information Technology, 2002 for giving expert opinion on electronic form of evidence, qua which learned SPP for the CBI submits that the voice examination and the transcript/conversation would show the demand made for the illicit money by the applicant, on behalf of the applicant reliance is further sought to be placed on the testimony of PW-14 who was examined i.e. Mr.Amitosh Kumar, Senior Scientific Officer in CFSL, Delhi as per which the request letter dated 28.07.2016 (D-18) was received in the laboratory from the CBI along with four sealed exhibits, specimen seal impression and copy of transcription on 29.07.2016 and he has inter alia stated to the effect that the hash value of the questioned voice was not sent to the examining laboratory by the CBI and that the examiner had also not asked the CBI to provide the hash value with it further having been stated by the said witness PW-14 that it was correct that the hash value is one of the parameters for detecting tampering of the questioned voices and that they prepared the wave from the chart to detect tampering in a voice sample and they have not annexed any wave form chart along with the report.

Furthermore, there is reliance sought to be placed on behalf of the applicant on the testimony of PW-16 Ms.Veer Jyoti qua the aspect that there was no DVR sent to the FSL.

Though the response that has been submitted by the CBI in relation to the aspect that despite directions of the learned Special Judge to the applicant to surrender on 24.06.2020, the applicant had not surrendered on 29.06.2020 before the Superintendent Jail, Delhi and on verification from Gupta Nursing Home, Vivek Vihar, Pvt. Hospital, the police personnel reached there and it was found that the appellant had already been discharged from the Hospital and pursuant to which non-bailable warrants were issued by the learned Trial Court on 30.06.2020 when it was learnt that the applicant had already surrendered before the Superintendent Tihar Jail, Delhi on 30.06.2020 with it having thus been submitted on behalf of the CBI that the conduct of the applicant/appellant negates the grant of the prayer made by the applicant seeking suspension of sentence during the pendency of the appeal.

On behalf of the appellant/applicant, it has been submitted that the applicant was discharged from the hospital only on 29.06.2020 by 5 PM and by 11.00 am on the next date i.e. 30.06.2020 he had surrendered before the Superintendent Tihar Jail, Delhi.

Learned SPP for the CBI however submits that though the learned Trial Court did not rely upon the conversations that was recorded, the conversation is categorical in relation to the demand of the ill gotten gratification by the applicant and that furthermore, through the impugned judgment, there has been a fair analysis made of the prosecution evidence that has been led. Inter alia it has also been submitted on behalf of the CBI that the offence for which the appellant has been convicted is grave and in as much as, the police personnel has been convicted for having sought and demanded and accepted the illegal gratification, the applicant merits no leniency whatsoever.

On behalf of the appellant/applicant, it has inter alia been submitted during the course of the submissions made that the applicant has been a recipient of several merit positions and awards from the police department amounting to 59 in number and that furthermore, the complainant himself is involved in a MCOCA Case.

On a consideration of the rival submissions that have been made, without any observations on the merits or demerits of the appeal which would be heard and the hearing of which would apparently take time, taking into account the various discrepancies that have been pointed out on behalf of the appellant, the appellant during pendency of the appeal is allowed to be released on bail subject to his filing a bail bond in the sum of Rs.1,00,000/- with two sureties of the like amount to the satisfaction of the Registrar General of this Court and subject to the appellant not leaving the country with an intimation to this effect being sent to the FRRO and all the Airports of the country with further directions to the effect:-

- he shall keep his mobile on at all times; • he shall drop his location on the Google map so that his location is available to the Investigating Officer; • he shall make no contact with the prosecution witnesses; • he shall commit no offence whatsoever and in the event of his being involved in any other case and lodging of FIR or DD entry

against him, the CBI shall bring the same to the notice of the Court forthwith. The application CRL.M.(BAIL) 7666/2020 is disposed of.

The Trial Court Record both in its physical form as well in the e- form has been received.

The appeal is thus, directed to be listed in due course.

ANU MALHOTRA, J AUGUST 05, 2020 'neha chopra'