

Sehegal Hossain vs Central Bureau Of Investigation & Anr on 24 April, 2024

Author: Navin Chawla

Bench: Navin Chawla

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 463/2024
SEHEGAL HOSSAIN

Through:

versus

CENTRAL BUREAU OF INVESTIGATION & ANR

..... Responde

Through: Mr.Anupam S Sharrma, SPP
(CBI) with Mr.Prakarsh Aira
Ms.Harpreet Ka
Mr.Abhishek Ba
Mr.Ripudaman Shar
Mr.Vashisht R
Mr.Syamantak Modgill and
Mr.Adeem Ahmed, Advs.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% 24.04.2024

1. This application has been filed by the applicant under Section 439 of the Code of Criminal Procedure, 1973 (in short, 'Cr.P.C.'), praying for the applicant to be released on bail in FIR No. RCo102020A0019 dated 21.09.2020 registered under Section 120B of the Indian Penal Code, 1860 (in short, 'IPC') read with Sections 7/11/12 of the Prevention of Corruption Act, 1988 (in short, 'PC Act').

2. It is the case of the prosecution that the above FIR was This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/04/2024 at 23:49:46 originally registered against one Satish Kumar, the then Commandant, BSF-36 Battalion, Md.Enamul Haque, Md.Anarul SK, Md.Golam Mustafa, and other officials of BSF, Indian Customs, and other unknown persons for the commission of offence under Section 120B of the IPC and Sections 7/11/12 of the PC Act.

3. As far as the applicant herein is concerned, he was charge- sheeted by the supplementary charge-sheet filed on 06.08.2022 alleging therein that the co-accused Anubrata Mondal was an influential politician of Birbhum District and the adjoining areas, being the District President of Trinamool Congress since 2011. The applicant was his Personal Security Officer.

4. It is stated that it was the applicant, who was in contact with the main accused Md. Enamul Haque, and used to collect illegal gratification on behalf of Anubrata Mondal from the said accused and S.K. Abdul Latif as patronage for providing protection to illegal business of cross-border cattle smuggling. The prosecution alleges that a total of 16 phone calls were exchanged between the accused Md. Enamul Haque and the applicant within a period of four months for this purpose.

5. It is further alleged that the applicant used to frequently visit the border area of Murshidabad and influence local persons in the name of co-accused Anubrata Mondal for ensuring smooth running of cattle smuggling by the accused Md. Enamul Haque.

6. It is alleged that the total income of the family from all sources during the period of consideration is approximately Rs.1,04,10,218/-. However, it has amassed immovable properties and other properties This is a digitally signed order.

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7. It is alleged that, in criminal conspiracy with other persons, the applicant had obtained undue advantage and also collected huge cash from the accused Md. Enamul Haque in lieu of extending protection and patronage to illegal cattle smuggling to Bangladesh through India- Bangladesh Border.

8. The learned counsel for the applicant submits that the main accused- Md. Enamul Haque has been granted bail in the present case by an Order dated 24.01.2022 passed by the Supreme Court in Criminal Appeal No.121/2022, titled Md Enamul Haque v. Central Bureau of Investigation. In the said order, the Supreme Court has observed as under:

"10. Having heard the rival submissions, we are of the considered opinion that the continued detention of the appellant in custody is not warranted in the facts of the present case. The appellant was granted default bail by the Special Judge, CBI Court at Thiruvananthapuram on 7 May 2018. In the regular case out of which the present appeal arises, the appellant was arrested and has been in custody since 6 November 2020. The charge-sheet has been submitted on 6 February 2021 and a supplementary charge- sheet has been submitted on 23 February 2021. Apart from a vague assertion that the investigation is in progress, no basis has been indicated why even after a lapse of over a year, the continued custody of the appellant is required. Having due regard to the fact that the charge sheet and a supplementary charge sheet have been filed, the nature of the alleged offence and the maximum sentence, the continued

detention of the appellant who has suffered custody for a year and two months is not warranted."

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9. He further submits that the other main accused, that is, Satish Kumar, has also been released on bail by an Order dated 21.12.2020 passed by the Special Judge (CBI) Court, Asansol.

10. He submits that another co-accused- Sekh Abdul Latif was also granted anticipatory bail by the Supreme Court, vide Order dated 12.09.2023 passed in SLP (Crl.) No.5095/2023, titled Sekh Abdul Latif v. Susanta Bhattacharya & Anr..

11. He submits that out of a total of 12 accused, 10 are either on bail or have not been arrested, only the applicant herein and Anubrata Mondal are in custody. As far as Anubrata Mondal is concerned, he has challenged the order rejecting his bail, which is presently pending adjudication before the Supreme Court.

12. He further submits that the prosecution has cited 189 witnesses and is further contending that the investigation is still ongoing. He submits that this trial is at the stage of scrutiny of documents. There are almost 5000 pages of documents in Bengali language which are yet to be translated. Therefore, the trial is not likely to conclude any time soon. He submits that looking into the nature of offences that the applicant has been charged with and his custody since 09.06.2022, the applicant is entitled to be released on bail.

13. On the other hand, the learned Special Public Prosecutor for the respondent submits that the charges against the applicant are rather grave and serious. He was, in fact, the person who provided patronage and support to the accused Anubrata Mondal and Md. Enamul Haque to carry out their illegal activities by threatening villagers and also public officers. He submits that for this patronage, the applicant This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/04/2024 at 23:49:47 amassed illegal wealth for which the applicant is also being prosecuted under the Prevention of Money Laundering Act, 2002. He submits that the witnesses are being threatened by all the accused as a whole and, in fact, some of the witnesses have gone missing. He submits that looking into the gravity of the offence of the applicant, the applicant should not be enlarged on bail.

14. I have considered the submissions made by the learned counsel for the parties.

15. In Anil Kumar Yadav v. State (NCT of Delhi), (2018) 12 SCC 129, the Supreme Court has laid down the principles that must be kept in mind by a Court while considering an application under

Section 439 of the Cr.P.C. The same are reproduced hereinunder:-

"17. While granting bail, the relevant considerations are : (i) nature of seriousness of the offence; (ii) character of the evidence and circumstances which are peculiar to the accused; and (iii) likelihood of the accused fleeing from justice; (iv) the impact that his release may make on the prosecution witnesses, its impact on the society; and (v) likelihood of his tampering. No doubt, this list is not exhaustive. There are no hard-and-fast rules regarding grant or refusal of bail, each case has to be considered on its own merits. The matter always calls for judicious exercise of discretion by the Court.

18. While considering the basic requirements for grant of bail, in *State of U.P. v. Amarmani Tripathi* [(2005) 8 SCC 21], this Court has held as under : (SCC p. 31, para 18) "18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) This is a digitally signed order.

The authenticity of the order can be re-verified from Delhi High Court Order Portal by scanning the QR code shown above. The Order is downloaded from the DHC Server on 25/04/2024 at 23:49:47 severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused;

(vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with;

and (viii) danger, of course, of justice being thwarted by grant of bail [see *Prahlad Singh Bhati v. State (NCT of Delhi)* (2001) 4 SCC 280 and *Gurcharan Singh v. State (NCT of Delhi)* (1978) 1 SCC 118. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in *Kalyan Chandra Sarkar v.*

Rajesh Ranjan (2004) 7 SCC 528 :

(SCC pp. 535-36, para 11) '11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer

from non-

application of mind. It is also necessary for the court granting bail to consider This is a digitally signed order.

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(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh (2002) 3 SCC 598 and Puran v.

Rambilas (2001) 6 SCC 338'

19. The test to be applied for grant of bail was also considered in Jayendra Saraswathi Swamigal v. State of T.N. (2005) 2 SCC 13 , wherein it was held as under : (SCC pp. 21-22, para 16) "16. ... The considerations which normally weigh with the court in granting bail in non-bailable offences have been explained by this Court in State v. Jagjit Singh (1962) 3 SCR 622 and Gurcharan Singh v. State (NCT of Delhi) (1978) 1 SCC 118 and basically they are -- the nature and seriousness of the offence; the character of the evidence; circumstances which are peculiar to the accused; a reasonable possibility of the presence of the accused not being secured at the trial;

reasonable apprehension of witnesses being tampered with; the larger interest of the public or the State and other similar factors which may be relevant in the facts and circumstances of the case."

16. Applying the above test to the facts of the present case, in my view, the applicant has been able to make out a case for being released This is a digitally signed order.

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17. As is noted hereinabove, the applicant has been in custody since 09.06.2022. The main accused, that is, Satish Kumar and Md. Enamul Haque, have already been released on bail by orders passed by the Special Judge and the Supreme Court, respectively. Sekh Abdul Latif has also been granted anticipatory bail by the Supreme Court vide its order dated 12.09.2023. The applicant has been charged under Sections 109/120B/420 of the IPC and Sections 7/9/11/12/13 of the PC Act. The

allegations against the applicant in the charge-sheet have also been perused. As stated by the learned counsel for the applicant, there are 189 witnesses, and the trial is not likely to conclude any time soon.

16. It must be kept in view that the custody of the accused during the trial is not to punish him but to ensure his presence at the trial and later, if convicted, to face the sentence. Reference in this regard may be placed on the judgement of the Supreme Court in Sanjay Chandra v. CBI, (2012) 1 SCC 40.

17. In the present case, there is no apprehension expressed by the respondent that there is any chance of the applicant fleeing from the process of law. As far as the submission that the applicant may influence the witnesses, as noted hereinabove, the main accused have already been released on bail. In any case, if the prosecution later finds that the applicant is misusing the liberty granted to him, it would always be open to the prosecution to move an appropriate application to seek the cancellation of bail.

18. Accordingly, it is directed that the Applicant be released on Bail This is a digitally signed order.

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- i. The Applicant shall provide his permanent address to the learned Trial Court. The applicant shall also intimate the Court, by way of an affidavit, and to the IO regarding any change in his residential address.
- ii. The Applicant shall appear before the learned Trial Court as and when the matter is taken up for hearing.
- iii. The Applicant shall provide all/latest/fresh mobile numbers to the IO concerned, which shall be kept by the Applicant in a working condition at all times and shall not be switched off or changed by him without prior intimation to the learned Trial Court and the IO concerned. The mobile location be kept on at all times.
- iv. The Applicant shall not indulge in similar or any other criminal activity and shall not communicate with or come in contact, directly or indirectly, with any of the prosecution witnesses or the co-accused.
- v. In case the Applicant is found involved in another case, it will be open to the prosecution to file an appropriate application seeking cancellation of his Bail in the present case as well.

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19. Needless to state, any observation touching upon the merits of the case is purely for the purposes of deciding the question of grant of Bail and shall not be construed as an expression on the merits of the matter.

20. The application is disposed of in the above terms.

21. Copy of this order be sent to the Jail Superintendent for information and necessary compliance.

NAVIN CHAWLA, J APRIL 24, 2024/ns/RP Click here to check corrigendum, if any This is a digitally signed order.

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