

Bhavesh Jain vs State on 27 April, 2020

Author: C.Hari Shankar

Bench: C. Hari Shankar

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IN THE HIGH COURT OF DELHI AT NEW DELHI
BAIL APPLN. 451/2020
BHAVESH JAIN

..... Petitioner
Through: Mr. Dayan Krishnan, Sr.
Advocate with Ms. Smriti
Sinha, Adv.

versus

STATE

.. Respondent
Through: Mr. Raghuvinder Verma, APP
with SI Ganpati Maharaj
Mr. Ajay Diggpaul, CGSC for
UOI/complainant

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER

% 27.04.2020

1. The applicant is in custody in connection with FIR No. 200, filed by the EOW on 11th October, 2019, u/s 409/120-B of the Indian Penal Code, 1860. He seeks regular bail.

2. The case arose out of a complaint filed by the Ministry of New and Renewable Energy (MNRE), Government of India, against M/s PragatAkshayUrga Ltd (PAUL). The recital of facts, in the FIR, is as under:

(i) Vide Order, dated 12th December, 2014, issued by the MNRE, guidelines, for the Solar Park Scheme of the MNRE, BAIL APPLN. 451/2020 Page 1 of 9 were issued. This was followed by according, by the MNRE, of in principle approval, on 29th September, 2015, for the setting up of one 500 MW Solar Park, in Maharashtra.

(ii) As required by the letter, dated 29th September, 2015 supra, whereby in principle approval was granted by the MNRE, the Government of Maharashtra, vide letters dated 15th October, 2015 and 21st October, 2015, submitted a formal proposal for setting up of the Solar Park. In the said proposal, PAUL was nominated as the Solar Power Park Developer (abbreviated, in the FIR, as "SPPD").

(iii) On request made by the Maharashtra Energy Development Agency (MEDA), PAUL was allowed to form a SPV, in the name of M/s Sai Guru Mega Solar Park Private limited (hereinafter referred to as "Sai Guru"), for development of the solar Park. The shareholders of Sai Guru were PAUL, Satish Jain and the present applicant. The FIR further recites that, as per information available on the website of the Ministry of Corporate Affairs, the signatories of Sai Guru include Satish Jain, Rakesh Prakash Jain and Satya NarainDholi.

(iv) Vide order dated 12th December, 2014, of the MNRE, Central Financial Assistance (CFA) of 25 lakhs was released to Solar Energy Corporation of India (SECI), towards preparation of the Detailed Project Report (DPR), for release to PAUL for development of the solar Park.

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(v) Further CFA of 5.05 crores was released, to SECI, vide

order, dated 29th June, 2016, of the MNRE, with a further direction to release 5 crores to MEDA, which, in turn, would release the said amount to PAUL.

(vi) Accordingly, on 2nd December, 2016, the SECI released 25 lakhs, for preparation of the DPR, to PAUL, through the MEDA, followed by further release of 5 crores to the MEDA, for onward disbursement to PAUL. However, taking into account the confirmation, by the Government of Maharashtra, that it would purchase only 82% of 20% of the total solar power from the Solar Park, the MEDA released, to PAUL, only 4.35 crores, which was transmitted vide RIGS on 2 December 2016.

(vii) As per the Solar Park Scheme of the MNRE, PAUL was required to complete the solar Park within 18 months from the date of grant of administrative approval, i.e. within 18 months of 29th June, 2016. The said period expired on 29th December, 2017.

(viii) Despite this, the FIR alleged that PAUL had not even achieved the next milestone of the scheme, involving the acquisition of land, despite various communications, by the MNRE to POOR to submit the revised DPR and expedite acquisition of land, and to submit documents evidencing acquisition of at least 50% of the required land. Sai Guru had BAIL APPLN. 451/2020 Page 3 of 9 not, however, either submitted the revised DPR or documents evidencing acquisition of at least 50% of the required land.

(ix) In the circumstances, in a review meeting held on 17th November, 2017, the SECI was advised to take back the CFA of 4.10 crores already released to Sai Guru, with interest. It was further decided that, thereafter, CFA would be released as per the revised Guidelines of the Solar Park Scheme, consequent on achievement of the 1st milestone, involving acquisition of at least 50% of the required land, by Sai Guru.

(x) The MNRE wrote, on 12th March, 2018, to Sai Guru, to return the CFA of 4.10 crores, with interest.

(xi) This request was, however, refused, by Sai Guru, vide letter dated 3rd April, 2018.

(xii) In the circumstances, the FIR alleged that Sai Guru was debating the issue and was not interested in developing the solar Park, even after receiving CFA of 4.10 crores, on which it had earned interest.

(xiii) The FIR further alleges that a team of officers of the MNRE, SECI and MEDA visited the site of the proposed solar Park on 20th December, 2018, but did not even find a site office of Sai Guru on the said site. No physical progress, towards development of the solar Park was seen. Local villagers BAIL APPLN. 451/2020 Page 4 of 9 informed that considerable private land was available (at measuring around 2600 acres), and, towards the end of 2015/early 2016, notarised sale agreements had been entered into, between Sai Guru and the farmers/landowners, covering around 1200 acres, but that these had not fructified into purchases. The farmers evinced their keen interest, to sell their land, but no reciprocal interest was shown by Sai Guru, which had purchased, till then, land at measuring approximately only around 50 acres.

(xiv) As a result, alleged the FIR, the Solar Power project had reached a standstill. The delay in completion of the project, it is alleged, was entirely attributable to the non-acquisition of land by Sai Guru. The government exchequer had also suffered a loss of 4.10 crores, along with the interest accrued thereon.

Sai Guru was completely non-committal to the various communications, addressed to it.

3. These facts, alleged the FIR, made out a case of breach of trust, fraud and cheating, on the part of Sai Guru, and merit registration of criminal proceedings, against the persons involved (including the present applicant) under Section 409/120-B IPC.

4. Notice stands issued, on the present application, on 14th February, 2020. Status Report has also been filed by the ACP, EOW, opposing the application.

5. Bail Application 770/2020, preferred by Rakesh Jain - whose BAIL APPLN. 451/2020 Page 5 of 9 situation is identical to that of the applicant, insofar as the allegations against him are concerned - is presently pending before this Court. The said application came up, for hearing, before a coordinate bench, on 22nd April, 2020. The learned Single Judge, hearing the application, noted the allegations against Rakesh Jain - which apply, equally, to the present applicant. Even so, it was observed, two co-accused, namely Satish Jain and Prakash Jain had been granted anticipatory bail, by this Court, in Bail Applications 240/2020 and 416/2020. This Court also recorded the undertaking, by learned counsel appearing on behalf of the accused Rakesh Jain, to the effect that the amount of CFA,

availed by PAUL/Sai Guru, would be repaid in full, and that, while 21,792,500/- stood paid on 26th December, 2019, the balance amount would be paid within 8 weeks from the date of release of the applicant in that case, i.e. Rakesh Jain. Recording this undertaking, the learned Single Judge, keeping in mind the fact that the applicant was in custody since 11th October, 2019, and that the CFA, availed, had been refunded in part, admitted Rakesh Jain to interim bail, for 8 weeks from the date of release from prison, on the terms specified therein.

6. In my view, the applicant would be entitled to parity of treatment with Rakesh Jain, the applicant in Bail Appl. 770/2020.

7. As the undertaking, to liquidate the amount of CFA, availed by Sai Guru, over and above the amount of 2,17,92,500/- already deposited, has already been tendered by Rakesh Jain, bail has been granted, inter alia, conditional thereon.

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8. Quite obviously, no identical condition can be fastened on the applicant, as it would amount to recovery of the same amount twice over.

9. Mr. Dayan Krishnan, learned Senior Counsel appearing for the applicant, has submitted that there is one difficulty, insofar as the applicant is concerned, in respect of furnishing of a surety, as the applicant hails from Indore, and is not in a position to obtain a local surety.

10. During the currency of the lockdown, presently in place till 3rd May, 2020, he submits that his client cannot travel to Indore or arrange for any alternative surety from Delhi. He, however, undertakes to furnish a surety of 1 lac, to the satisfaction of the Jail Superintendent/concerned Duty MM, within a week of the lifting of the lockdown.

11. Mr. Dayan Krishnan relies, to support this request, on para 33 of the judgment of the Supreme Court in *Moti Ram v. State of M.P.*, 1978 (4) SCC 47, which reads thus:

"33. To add insult to injury, the Magistrate has demanded sureties from his own district! (We assume the allegation in the petition). What is a Malayalee, Kannadiga, Tamil or Telugu to do if arrested for alleged misappropriation or theft or criminal trespass in Bastar, Port Blair, Pahalgam or Chandni Chowk? He cannot have sureties owning properties in these distant places. He may not know any one there and might have come in a batch or to seek a job or in a morcha. Judicial disruption of Indian unity is surest achieved by such provincial allergies. What law prescribes sureties from outside or non-regional language applications? What law prescribes the geographical discrimination implicit in asking for sureties BAIL APPLN. 451/2020 Page 7 of 9 from the court district? This tendency takes many forms, sometimes, geographic, sometimes linguistic, sometimes legalistic. Article 14 protects all Indians qua Indians within the territory of India. Article 350 sanctions representation to any authority, including a court, for redress of grievances in any language used in the

Union of India. Equality before the law implies that even a vakalat or affirmation made in any State language according to the law in that State must be accepted everywhere in the territory of India save where a valid legislation to the contrary exists. Otherwise, an adivasi will be unfree in Free India, and likewise many other minorities. This divagation has become necessary to still the judicial beginnings, and to inhibit the process of making Indians aliens in their own homeland. Swaraj is made of united stuff."

12. The request appears, to me, to be eminently reasonable.

13. In view thereof, following the order dated 22nd April, 2020, passed by a Coordinate Bench of this Court in Bail Appl. 770/2020 (Rakesh Jain v. State), the applicant-Bhavesh Jain is admitted to the interim bail for a period of eight weeks from the date of his release from prison on his furnishing a Personal Bond in the sum of ₹ 1 lakh, for the present. The applicant shall, however, remain bound by his undertaking, before this Court, to furnish a surety for a like amount of ₹ 1 lakh, to the satisfaction of the Jail Superintendent/Duty MM concerned, within one week of lifting of the lockdown, presently in place till 3rd May, 2020.

14. Before release from custody, the applicant shall furnish his Aadhar card number and Mobile number, to the Jail Superintendent.

15. During the period of his interim bail, the applicant shall not BAIL APPLN. 451/2020 Page 8 of 9 leave the country without prior permission of the learned trial court.

16. Copy of this order be communicated to the Jail Superintendent for information and compliance.

17. List the application on 6th July, 2020. The applicant shall appear on the said date.

C.HARI SHANKAR, J

APRIL 27, 2020
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