

Shri Vineet Singh vs The Statecbi on 2 August, 2024

THE HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR

I.A.No.1 of 2024

In

CRIMINAL REVISION CASE No.620 of 2024

ORDER:

1. This petition is filed under section 438(1) of the BNSS Act, 2023 to grant bail by suspending the order passed in CrI.M.P.No.227 of 2024 dated 06.07.2024 on the file of learned Special Judge for CBI Cases, Kurnool. The said petition was filed before the learned Special Judge seeking rejection of remand and that prayer was denied and the petitioners were remanded to judicial custody by the court. By this petition, A1 and A2/ petitioners seek bail pending hearing of CrI.R.C.No.620 of 2024 by this court.

2. Heard arguments of Sri T.Sreedhar, the learned counsel for petitioners and Sri Jupudi V.K.Yagnadutt, the learned Central Government Counsel.

3. The consideration of the present petition for bail has arisen in circumstances that do not usually arise. A few facts and circumstances alone require their mention here for the purpose of consideration of the present petition.

4. Based on source information, there was swift action on part of the officers of the CBI and it registered RC.No. 2182024A0013/CBI/AC-III/New Delhi. The information in the report and the investigation that took place in this regard disclose criminal acts as against several individuals which include public servants, private persons, commercial organizations. Among them, seven accused were arrested on 05.07.2024 at different times. On an application for remand, under section 187 BNSS Act, the learned Special Judge for CBI cases at Kurnool remanded them to judicial custody on 06.07.2024. The present petitioners/A1 and A2 are thus in judicial custody. At the stage of remand, A1 to A5 filed CrI.M.P.No.227 of 2024 praying the learned Special Judge to reject the remand on the grounds that were urged by the accused in that petition. After hearing on both sides, the learned Special Judge in an order dated 06.07.2024 found no merit in that petition and dismissed it accordingly. After that order, the accused were remanded to judicial custody by a separate order.

5. At the first hearing, certain submissions were made on both sides touching upon the revision case. Various questions had arisen in the revision case and further time was felt necessary to complete the hearing in the revision case. In such circumstances, as agreed between both sides, the application for bail by way of interim relief which was filed along with the revision case was taken up and is thus heard.

6. The essence of the prosecution case relates to dishonest and corrupt activities in South Central Railways at Guntakal Division. The allegations are that there is a cartel of contractors and there is a set of dishonest public servants. Tenders were said to have been awarded to chosen persons on

paying and receiving bribes. Inflated bills were passed for dishonest reasons. Selective passing of bills for executed works is yet another allegation. The offences alleged are under sections 61(2) BNSS Act, 2023 (criminal conspiracy) and sections 7, 8, 9, 10 and 12 of the Prevention of Corruption Act, 1988 (herein after referred as 'the Act, 1988'). The fact to be noticed is that all the offences alleged are punishable with imprisonment which may extend to seven years and fine. It is in that regard; the relevant aspects have arisen in the revision filed by the accused before this court. Two principal contentions, inter-alia, raised before this court by the accused in the criminal revision are

1. The conditions mentioned for law enforcement agency as to when an arrest can be made without warrant issued by a competent court were not complied with and thus there is violation of the mandate in section 35 BNSS Act, 2023 in spirit.

2. The allegations against these petitioners/A1 and A2, according to accused are relatable to recommendations made or decisions taken by the public servants/A1 and A2 as indicated in Section 17A of the Act, 1988. Therefore, there could be no investigation into such offences without the previous approval of the appropriate Government. Since, such approval was not obtained remand could not have been ordered.

7. As against that, valiant contentions were raised by the CBI questioning the correctness of the contentions raised by the accused. The challenge by CBI refers to various facts and various principles of law contained in statute and precedent. Their submissions include scrupulous compliance of section 35 BNSS and about proviso to section 17A of the Act, 1988 as per which if it is a case of trap there was no need for prior approval of the Competent Government.

8. Such submissions on part of CBI further raised the need to see whether it was a case of trap or not. That required detailed analysis which shall be taken up while considering the revision.

9. Attention of this court is drawn to the reading material on Trap kept in the public domain by the Central Bureau of Investigation Academy. This indicates trap means catching a public servant accepting bribe for showing favour or for the favour already shown or forbearing to do so. The point to be seen is, trap is catching while the public servant is in the act of receiving the bribe. Since the contention raised is that, it is a case of trap, there is need to verify the trap proceedings. According to learned counsel for petitioners, there are no trap proceedings. Therefore, that is one matter that requires a deeper consideration on facts to find out the application of appropriate provision of law. The other question that would arise in considering the revision is to see whether the case falls within section 17A which requires material to see whether the undue advantage obtained by the public servant is referrable to only recommendations or decisions taken by him or not. According to the revision petitioners, no details of dishonest allotment of contracts or undue release of funds or passing of bills are there on record. It is that aspect of the matter that requires consideration. More importantly, when the case is to be considered as one whether it is falling under proviso of section 17A as it mentions arrest of a person on the spot, on the charge of accepting or attempting to accept any undue advantage., the facts available on record do not show catching them red-handed and the record would show about search and seizure of certain gold articles from A1 and seizure of certain records from A2. One has to consider obtaining undue advantage in the past would

also fall within the parameters of the proviso or not. Since, all these complicated facts and law have fallen for consideration which the counsels on both sides require to address in more elaboration, this bail petition is considered without expressing any opinion on any of the questions raised in the revision.

10. Freedom and liberty are precious. Legitimate exercise of them is always protected. When there is illegitimate use of freedom or misuse of liberty occurs, the intervention of criminal law happens. Since the very remand order is questioned in the revision, delving at any length would certainly amount to prejudging and therefore is avoided here. Remand and bail stand opposing to each other. A regular bail application was initially moved for these petitioners before the learned Special Judge and thereafter they not pressed the same and accordingly that petition was dismissed. The present petition for bail is considered in the following context of facts.

- Petitioners were arrested on 05.07.2024 • They were produced before the learned Special Judge on 06.07.2024 and were remanded to judicial custody.

- Police custody was prayed by the CBI and was granted by the learned Special Judge and was availed by the CBI from 16.07.2024 to 18.07.2024.

- Petitioners were taken back to judicial custody and the present spell of remand is up to 02.08.2024 (this day) • Both the petitioners are senior officers in the Railways • Health concerns for A2 are shown by medical records.

11. The above facts do indicate that nearly four weeks past, the petitioners have been in custody and a good part of concerns that require their remand should have been by now alleviated. While serious questions are still under discussion in the revision, granting interim bail, in the opinion of this court, cannot harm the cause of CBI and its investigation, if appropriate frame work of conditions is ordered. Bail is only a limited liberty and in the case at hand, it is for a limited period. The reasons for taking this decision for granting interim bail are confined to this order alone and it has nothing to do for contentions that are to be advanced in the criminal revision case. Bail is limited liberty. A free citizen loses his full liberty when he is detained and kept in the custody of the court. When he is released on bail, he is kept in the custody by sureties. Thus, in essence, persons on bail are still under the custody of the court. The various rulings cited on both sides with reference to various aspects of principles contained in BNSS Act and Prevention of Corruption Act are not adverted to here since this is only an interim bail and since the question of arrest and remand themselves are pendent consideration of the revision.

12. In the above referred circumstances, this petition is allowed in the following terms:

1. Petitioners/A1 and A2 shall be released on interim bail on each executing a personal bond for a sum of Rs.30,000/-

(Thirty thousand only) each to the satisfaction of the learned Special Judge for CBI Cases, Kurnool.

2. A1 and A2 are restrained from taking access to their respective offices and to the office records during the period they are on bail.
3. They shall mark their attendance before the investigating officer on every Saturday between 11.00 AM and 2.00 PM and thereby making themselves available for investigation.
4. They shall not indulge in similar acts of crime.
5. They shall not, directly or indirectly, make any inducement, threat or promise to any persons acquainted with the facts of the case to dissuade them from disclosing such facts to the court or to any police officer This order holds good till the disposal of CrI.R.C.No.620 of 2024 by this court. Both sides should soon complete their arguments in the revision.

_____ Dr. V.R.K.KRUPA SAGAR, J Date: 02.08.2024 Dvs THE
HON'BLE JUSTICE Dr. V.R.K.KRUPA SAGAR CRIMINAL REVISION CASE No.620 of 2024 Date:
02.08.2024 Dvs