

Partha Chatterjee

v.

Directorate of Enforcement

(Criminal Appeal No. 5266 of 2024)

13 December 2024

[Surya Kant and Ujjal Bhuyan, JJ.]

Issue for Consideration

Matter pertains to grant of bail to the appellant-former State Education Minister and MLA, in the ED case for his involvement in various investigations, owing to the racket of illegal appointment of teachers.

Headnotes[†]

Prevention of Money Laundering Act, 2002 – ss.45 and 50 – Grant of bail – Teachers Recruitment Scam – FIR registered by CBI under the PC Act, as well as IPC, against certain functionaries of the West Bengal Board of Primary Education, and one who was allegedly engaged in an unholy nexus with varied authorities, so as to facilitate appointments of primary school teachers in exchange for substantial sums of money – On basis thereof, ED also registered the case against the said persons – Thereafter, conduct of raid at the premises of the appellant-former State Education Minister and MLA, leading to incriminating documents relating to the appellant – Arrest of appellant, for his involvement in various investigations, owing to the racket of illegal appointment – Bail application – Rejected by trial court and the High Court – Propriety:

Held: Impartiality is a prerequisite to the Rule of Law, wherein decisions are based on the factual matrix of the case as opposed to the individual's position or influence – While an accused person's official status should not be grounds for denying bail, it also cannot constitute a special consideration to grant bail if otherwise no case is made out to provide such relief – Official positions, regardless of their stature, lose their relevance for the purpose of exercising judicial discretion judiciously – Instead, the claim of the appellant to be examined on basis of pleas taken to highlight his mitigating circumstances as well as the adverse impact it may

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cause in the wake of allegations effecting the future of thousands of well merited aspirants, which underscores the broader societal harm caused by such actions and the erosion of trust in the integrity of public institutions – Statement of the appellant’s close associates constitutes prima facie evidence linking the appellant to substantial heaps of bribe money recovered from the associate’s residence and company premises – Appellant’s prayer for bail must also be juxtaposed against the apprehension of threat to life expressed by the said associate in her statement – However, the suspect cannot be held in custody indefinitely and that undertrial incarceration should not amount to punitive detention – Striking a balance between these considerations, bail granted with certain conditions – Bail to be effective from or before 01.02.2025, subject to framing of charges by the trial court, examination of material witness, furnishing of bail bonds, and compliance with the other bail conditions – Said directions pertain only to the said ED Case – Prevention of Corruption Act, 1988. [Paras 13-19]

Bail – Grant of – Prolonged incarceration, effect:

Held: Prolonged incarceration of an accused awaiting trial unjustly deprives them of their right to personal liberty – Even statutory embargoes on the grant of bail must yield when weighed against the paramount importance of the right to life and liberty u/Art. 21, particularly in cases where such incarceration extends over an unreasonably long period without conclusion of trial – Suspect cannot be held in custody indefinitely and that undertrial incarceration should not amount to punitive detention – Nevertheless, the court to ensure that affluent or influential accused do not obstruct the ongoing investigation, tamper with evidence, or influence witnesses, namely, actions that undermine the fundamental doctrine of a fair trial. [Paras 13, 17]

Bail – Grant of bail – General Principles:

Held: Grant of bail to be determined based on the unique circumstances of each case, balanced against settled factors such as the gravity of the offence, the nature of the allegations, likelihood of interference with the ongoing investigation, the possibility of evidence tampering, threat or influence over the material witnesses, the societal impact of such release, and the risk of the accused absconding among others. [Para 14]

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Prevention of Corruption Act, 1988; Prevention of Money Laundering Act, 2002; Bharatiya Nagarik Suraksha Sanhita, 2023.

List of Keywords

Bail; Former State Education Minister and MLA; Racket of illegal appointment of teachers; Functionaries of West Bengal Board of Primary Education; Appointments of primary school teachers; Arrest; Bail application; Grant of bail; Interference with the ongoing investigation; Evidence tampering; Threat or influence over material witnesses; Societal impact; Impartiality; Prerequisite to Rule of Law; Official positions; Judicial discretion; Mitigating circumstances; Societal harm; Integrity of public institutions; Bribe money; Undertrial incarceration; Punitive detention; Examination of material witness; Furnishing of bail bonds; Prolonged incarceration; Right to life and liberty u/Art.21; Doctrine of a fair trial.

Case Arising From

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 5266 of 2024

From the Judgment and Order dated 30-04-2024 of the High Court at Calcutta in CRM (SB) No. 180 of 2023

Appearances for Parties

Mukul Rohatgi, Sr. Adv., Ms. Misha Rohatgi, Nakul Mohta, Anirban Guhathakurta, Bharat Monga, Ayush Kashyap, Muthu Thangathurai, Advs. for the Appellant.

Suryaprakash V. Raju, A.S.G., Zoheb Hossain, Annam Venkatesh, Vivek Gurnani, Animesh Upadhyay, Arvind Kumar Sharma, Ms. Bhawna Gandhi, Ms. Deepika Gahlot, Ms. Aakriti Mishra, Advs. for the Respondent.

Judgment / Order of the Supreme Court**Order**

Leave granted.

2. The Appellant has been a Member of the West Bengal Legislative Assembly since 2001, and was a member of the ruling party of the

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State at the relevant time. He was inducted as a Minister in the West Bengal State cabinet between 2011 and 2022 and seems to have held the post of the State Education Minister since 2016. During his tenure as the State Education Minister, recruitments to various posts like: (i) Primary School Teachers; (ii) Assistant School Teachers; (iii) Group C staff; and (iv) Group D staff, took place from time to time.

3. Writ petitions were filed before the High Court of Calcutta (**High Court**), questioning the legitimacy of the procedures followed in the aforementioned recruitments. Most pertinently, proceedings were initiated by unsuccessful candidates in the Teachers Eligibility Test (**TET**) conducted by the West Bengal Board of Primary Education, *vide* WPA No. 9979/2022, alleging corrupt practices in the recruitment process of Primary School Teachers. In the light of serious allegations having been made, the High Court on 08.06.2022 directed the Central Bureau of Investigation (**CBI**) to conduct a thorough investigation into the matter and also to register a case in this regard.
4. Consequently, the CBI registered FIR RC0102022A0006 (**Predicate FIR**) on 09.06.2022, under Sections 7, 7A and 8 of the Prevention of Corruption Act, 1988 (**PC Act**), as well as Sections 120B, 420, 467, 468, 471 and 34 of the Indian Penal Code, 1860 (**IPC**), against certain functionaries of the West Bengal Board of Primary Education, and one Ranjan@Chandan Mondal who was allegedly engaged in an unholy nexus with varied authorities, so as to facilitate appointments of primary school teachers in exchange for substantial sums of money. The said FIR was registered on the basis that the selection process of Assistant Teachers and Primary School Teachers had been conducted in a dubious manner, considering that the answer key for the TET was designed in a way that would deprive eligible candidates and, instead, facilitate back door entry to such ineligible candidates who submitted blank examination papers.
5. The Predicate FIR dated 09.06.2022 registered by the CBI, led the Enforcement Directorate (**ED**) also to take cognizance and register ECIR No. KLZO-11/19/2022 on 24.06.2022, against the aforesaid office bearers and Ranjan@Chandan Mondal, containing the same allegations as in the CBI Case. On this basis, a *prima facie* case for the offence of 'money laundering' under Section 4 of the Prevention of Money Laundering Act, 2002 (**PMLA**) was stated to have been made out.

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6. The ED conducted a raid at the premises of the Appellant on 22.07.2022 and recorded his statement under Section 17 of the PMLA. During the said search, incriminating documents pertaining to: (i) twelve immovable properties in the name of the Appellant's close associate; and (ii) documents showcasing the appointment of Group D staff such as admit cards of candidates, intimation letters for verification of testimonials and personality test, application forms etc. are claimed to have been recovered. The searches conducted at the residential premises of the Appellant's close aide further led to the seizure of cash amounting to Rs. 21.90 crores and gold jewellery amounting to Rs. 76,97,100/-.
7. Additionally, based on the interrogation of the alleged close associate and scrutiny of the documents already seized, further search was conducted, whereby cash amounting to Rs. 27.90 crores and gold amounting to Rs. 4.31 crores were seized from the premises connected to companies that *de facto* were stated to belong to the Appellant, where he had allegedly appointed dummy directors. A deeper probe further revealed that these companies had been used to acquire, possess, conceal, appropriate, project and claim large-scale proceeds of crime.
8. In the wake of these allegations, the Appellant was arrested by the ED under Section 19 of the PMLA, on 23.07.2022. The Special Court (CBI) (**Trial Court**) on 25.07.2022 allowed the ED custody of the Appellant for a period of ten days, which was further extended till 05.08.2022 *vide* order dated 03.08.2022. The Trial Court on 05.08.2022 remanded the Appellant to judicial custody, where he has remained since. The ED thereafter filed ML Case No. 13/2022 (**ED Case**) under Sections 44 and 45 of the PMLA before the Trial Court against the Appellant, his associate and various dummy companies that are claimed to have been set up by the Appellant.
9. At this juncture, given that the Appellant is involved in various investigations, owing to the racket of illegal appointment of unmerited candidates to the posts of Primary School Teachers, Assistant Teachers for Class IX-X and Class XI-XII, Group C Posts and Group D Posts, it is useful to provide clarity and avoid any confusion regarding the current status of the different cases, through the following table:

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Sl. No.	Investigating Authority	Case Details	Date of Arrest	Current Status
1.	ED	ECIR/KLZO11/19/2022 (<i>Primary Teachers Recruitment Scam</i>)	23.07.2022	Appellant in judicial custody since 05.08.2022. Complaint filed.
2.	ED	ECIR/KLZO11/17/1022 (<i>Group C and D Posts Recruitment Scam</i>)	-	Under investigation.
3.	ED	ECIR/KLZO11/18/1022 (<i>Assistant Teachers Recruitment Scam, Class IX-XII</i>)	-	Under investigation.
4.	CBI	RC No. 6/2022 – Predicate offense (<i>Primary teachers recruitment scam</i>)	01.10.2024	Chargesheet and supplementary chargesheet filed. Further investigation underway.
5.	CBI	RC No. 2/2022 (<i>Group D posts recruitment scam</i>)	-	Charge sheeted in the second prosecution complaint.
6.	CBI	RC No. 5/2022 (<i>Group C posts recruitment scam</i>)	16.09.2024	Charge sheeted in the main prosecution complaint.
7.	CBI	RC No. 3/2022 (<i>Class IX-X teachers recruitment scam</i>)	-	Charge sheeted in the third prosecution complaint.
8.	CBI	RC No. 4/2022 (<i>Class XI-XII teachers recruitment scam</i>)	-	Charge sheeted in the second prosecution complaint.

10. That being the state of affairs, the Appellant filed a bail application before the Trial Court in connection with the ED Case, which was rejected on 03.08.2023. The Appellant then sought bail before the High Court but the same came to be declined *vide* the impugned

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judgement dated 30.04.2024. The grounds for such rejection were based on the statements made by witnesses under Section 50 of the PMLA as well as other corroborating material, owing to which the High Court held that the Appellant had failed to overcome the twin conditions postulated by Section 45 of the PMLA.

11. The aggrieved Appellant is thus before us seeking bail, *inter alia*, on the following grounds: (i) the prolonged period of incarceration of over two years; (ii) the Appellant was neither named nor chargesheeted in the predicate offence; (iii) the Appellant does not have any criminal antecedents and has deep roots in society; (iv) he is not a flight risk or likely to tamper with evidence or witnesses; (v) no cash was recovered from the Appellant during search and seizure by the respondent ED; (vi) the Appellant is 72 years of age and suffers from multiple health ailments; (vii) the Appellant has already spent one-third of the total sentence prescribed for the offence and thus, is entitled to bail under Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS); and (viii) there is no hope in the trial commencing in view of the 442 documents and 183 witnesses cited for examination. Mr. Mukul Rohatgi, Learned Senior Counsel, lastly contended that the Appellant ought to be granted bail on the ground of parity, considering that his co-accused have already been released on bail.
12. *Per contra*, Shri S.V. Raju, Learned Additional Solicitor General of India, has opposed the prayer for bail, urging primarily that: (i) the provisions of the first proviso to Section 479 of the BNSS would not be applicable as the Appellant is not a first time offender; (ii) the Appellant would not be entitled to bail in view of Section 479(2) of BNSS, as multiple cases are registered against him; (iii) the Appellant being in a high ranking position of a Minister and having indulged in an offence involving moral turpitude cannot seek parity with other co-accused who are much lower in rank and status than him; (iv) the close acquaintance of the Appellant and from whose residence huge amount of valuables were recovered has in her statement under Section 50 of the PMLA expressed apprehension of threat to life at the hands of the Appellant; and (v) the seizure and attachment, in this case, stands at a hefty Rs. 151.2 crores, which are the proceeds of crime generated out of criminal activities related to scheduled offences under the PMLA.

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13. We have considered the rival submissions and carefully examined the material on record. At the outset, it is worth reiterating that this Court, through a catena of decisions, has consistently emphasized that prolonged incarceration of an accused awaiting trial unjustly deprives them of their right to personal liberty. Even statutory embargoes on the grant of bail must yield when weighed against the paramount importance of the right to life and liberty under Article 21 of the Constitution, particularly in cases where such incarceration extends over an unreasonably long period without conclusion of trial.
14. Equally well-established is the principle that the grant of bail must be determined based on the unique circumstances of each case, balanced against settled factors such as the gravity of the offence, the nature of the allegations, likelihood of interference with the ongoing investigation, the possibility of evidence tampering, threat or influence over the material witnesses, the societal impact of such release, and the risk of the accused absconding among others.
15. In this context, the argument that the Appellant's position as a Minister entitles him to any special consideration does not hold merit from either perspective. Impartiality is a prerequisite to the Rule of Law, wherein decisions are based on the factual matrix of the case as opposed to the individual's position or influence. In this vein, this Court has emphatically clarified that while an accused person's official status should not be grounds for denying bail, it also cannot constitute a special consideration to grant bail if otherwise no case is made out to provide such relief. Official positions, regardless of their stature, lose their relevance for the purpose of exercising judicial discretion judiciously.
16. Instead, the claim of the Appellant must be examined through the lens of various pleas he has taken to highlight his mitigating circumstances as well as the adverse impact it may cause in the wake of allegations of playing with the future of thousands of well-merited aspirants and the undue benefits accrued to undeserving persons at the cost of these unsuccessful candidates. This later perspective underscores the broader societal harm caused by such actions and the erosion of trust in the integrity of public institutions. In this light, the statement of the Appellant's close associate(s) recorded under Section 50 of the PMLA assumes enormous significance, as it constitutes *prima facie* evidence linking the Appellant to substantial heaps of bribe money recovered from the associate's residence and company

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premises. Additionally, the Appellant's prayer for bail must also be juxtaposed against the apprehension of threat to life expressed by the said associate in her statement. Having said so, we may clarify that the question of the evidentiary value of the statement recorded under Section 50 of the PMLA has not been addressed at this stage so that no prejudice is caused to parties.

17. We, however, cannot be oblivious to the settled principles that a suspect cannot be held in custody indefinitely and that undertrial incarceration should not amount to punitive detention. The Court would, nevertheless, ensure that affluent or influential accused do not obstruct the ongoing investigation, tamper with evidence, or influence witnesses, namely, actions that undermine the fundamental doctrine of a fair trial.
18. Striking a balance between these considerations and without expressing any opinion on the merits of the allegations, we deem it appropriate to dispose of this appeal with the following directions:
 - a. Since the charge sheet in the ED Case (ECIR No. KLZO-11/19/2022) has already been filed but charges are yet to be framed, we direct the Trial Court to decide on framing of charges before the commencement of the winter vacations and/or before 31.12.2024, whichever is earlier;
 - b. The Trial Court shall thereafter fix a date within the second and third week of January 2025 for recording the statements of such prosecution witnesses who are the most material or vulnerable. All such witnesses, especially those who have expressed apprehension of danger to their lives (who might be two or three), will be examined on these dates;
 - c. The Appellant and his counsel are directed to extend full cooperation to the Trial Court for the recording of statements of these witnesses;
 - d. The witnesses will be examined without prejudice to the Appellant's right to challenge the decision on framing of charges if the decision is adverse and if he is so aggrieved. However, upon such challenge, no stay on trial shall be granted;
 - e. In the event the examination of these witnesses is not completed on the dates fixed due to unforeseen circumstances, the Trial Court may do so lastly in the third and fourth week of January, 2025;

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- f. The Petitioner shall thereafter be released on bail on 01.02.2025, subject to his furnishing bail bonds to the satisfaction of the Trial Court;
 - g. In the event that the Trial Court is able to complete the directions put forth in (b) and (e) at an earlier date, then the Appellant may be released on bail immediately thereafter and prior to the given date of 01.02.2025;
 - h. Any attempt made by the Appellant to influence or threaten the witnesses, directly or indirectly, shall entail cancellation of the relief of bail;
 - i. The Appellant shall appear before the Trial Court on every date of hearing, and no unnecessary adjournment shall be sought on his behalf. If the Appellant is found involved in prolonging the trial, it shall be taken as a valid ground for cancellation of bail; and
 - j. The Appellant shall not be appointed to any public office (except that he shall continue to be a Member of the West Bengal Legislative Assembly) during the pendency of trial.
19. We find it necessary to clarify that these directions pertain only to the ED Case pending against the Appellant (ECIR No. KLZO-11/19/2022). We have not expressed any opinion on the merits of any of the other pending investigations, including the recent arrest of the Appellant in one of the cases by the CBI.
20. Ordered accordingly. Pending applications, if any, are disposed of.

Result of the case: Appeal disposed of.

[†]Headnotes prepared by: Nidhi Jain