

Harish Bansal vs The State Of Assam on 20 September, 2024

Author: Malasri Nandi

Bench: Malasri Nandi

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GAHC010165352024

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : Bail Appln./2424/2024

HARISH BANSAL
S/O SRI TEJ PAL BANSAL, R/O W-10 C/12, WESTERN AVENUE, SAINIK
FARMS, NEW DELHI-110062

VERSUS

THE STATE OF ASSAM

REPRESENTED BY THE PUBLIC PROSECUTOR, ASSAM

Advocate for the Petitioner : MR. D DAS SR. ADV, MR. INDRAJIT BHUYAN, MR. I DAS, MR J BORAH

Advocate for the Respondent : PP, ASSAM, MR. A K BHUYAN, MR. M MORE

BEFORE
HONOURABLE MRS. JUSTICE MALASRI NANDI

ORDER

20.09.2024 Heard Mr. D. Das, learned senior counsel assisted by Mr. J. Borah, learned counsel for the petitioner. Also heard Mr. A.K. Bhuyan, learned counsel for the informant and Mr. M. Phukan, learned Public prosecutor Assam.

2. By filing this petition under Section 483 of Bharatiya Nagarik Suraksha Page No.# 2/10 Sanhita, 2023, the accused-petitioner, namely, Harish Bansal, has prayed for grant of bail in connection with CID PS Case no. 16/2023 u/s 120(B) read with Sections 255/ 256/ 257/ 259/ 260/ 406/ 417/419/

420/ 463/ 465/ 466/ 467/ 468/ 471/ 472/ 474/ 506 IPC read with section 7(1) and 7(2) of the State Emblem of India (Prohibition of improper use) Act, 2005.

3. The prosecution case in brief is that an FIR has been lodged on 10/10/2023 by the informant who is the director of Sabharwal Trading Pvt. Ltd. before the CID Assam, stating inter alia that the petitioner along with five other co-accused had conspired to deceive the informant and his company believing the authenticity of a government contract. It is further alleged in the FIR that the accused persons cheated and defrauded the informant and the victims by impersonating them as public servants, counterfeiting government seals and using forged documents to cause financial loss. Accordingly, a case was registered vide CID PS case no. 16/2023.

4. Learned senior counsel for the petitioner submits that the accused/ petitioner is no way connected with the alleged offence. A bare reading of the FIR and charge sheet would reveal that no recoveries have been made from the accused/petitioner. His alleged role is attributed to certain whatsapp messages where he enquired about the delivery status and payments.

5. It is further submitted that the petitioner came to know about CID PS case no. 16/2023, when a search was conducted at the residence of his brother, co-accused Khushdeep Bansal, pursuant to a search warrant issued by the court. Accordingly, accused/ petitioner preferred an anticipatory transit bail before the court of learned Sessions Judge, Saket, New Delhi but subsequently it was withdrawn. In the meantime the learned CJM Kmarup (M) issued warrant Page No.# 3/10 of arrest against the accused/petitioner and accordingly he was arrested on 04/02/2024. Since then the petitioner has been languishing in judicial custody. Thereafter, the petitioner has preferred a bail application vide no. BA1057/2024 before this court, but the said bail application was rejected on 30/04/2024 on the ground that as the investigation was going on against the accused/ petitioner, the grant of bail during that stage may frustrate the investigation.

6. It is also the submission of learned senior counsel that by that time investigating authority submitted charge sheet before the learned CJM, which was accordingly committed to the court of Sessions vide Sessions case no. 93/2024 and the trial has commenced.

7. According to the learned senior counsel for the petitioner, the bail was granted to two co- accused on the grounds that investigation of the case was over and learned senior counsel has prayed to enlarge the accused/ petitioner on bail on the same footing and considering the length of detention.

8. Another point raised by learned senior counsel that this is not an economic offence causing loss to the government exchequer, but the contract between two individuals.

In support of his submission, learned senior counsel has placed reliance on the following case laws -

a. (1978) 4 SCC 47 (Moti Ram and others vs. State of Madhya Pradesh) b. (2013) 7 SCC 452 (CBI vs. V. Vijay Sai Reddy) Page No.# 4/10 c. (2020) 2 SCC 474 (Rekha Murarka vs. State of West Bengal) d. (2013) 7 SCC 439 (Y. S. Jagan Mohan Reddy vs. CBI) e. (2009) 2 SCC 281 (Vaman Narain Ghiya vs. State of Rajasthan) f. (2020) 13 SCC 79 (P. Chidambaram vs. Directorate of Enforcement)

9. Per contra, learned counsel for the informant submits that, mere filing of charge sheet in any manner does not lessen the allegations but rather establishes that after due investigation prosecution has filed charge sheet for trial of accused persons. It is further pointed out that to grant bail in economic offence, the court is to look into the nature of accusation, severity of punishment in case of conviction and nature of supporting evidence, reasonable apprehension of tampering with evidence or of threat to complainant and prima facie satisfaction of court in support of charge as reflected in the case of Y.S.Jagan Mohan Reddy (supra) .

Learned counsel has referred another case law -

a) (2022) 0 Supreme (SC) 326 (Jagjeet Singh and others vs. Asish Mishra @ Maan and others)

10. Learned Public Prosecutor for the State has also opposed in granting bail to the petitioner by stating that the present offence relates to siphoning of more than 60 crores of Rupees of the complainant and his associates, pursuant to a deep rooted conspiracy in which the accused/petitioner played an active role. Though charge sheet has been submitted against the present petitioner but two accused person are still absconding and investigation is pending against Page No.# 5/10 them. Under such backdrop, if the petitioner is released on bail, there is every possibility of hampering further investigation which is still pending against two absconding accused persons.

11. Having heard the learned counsel for the parties, the admitted position is that the accused/petitioner was not voluntarily surrendered before the court, knowing about the institution of the instant case. He was avoiding arrest. The learned CJM, Kamrup (M) was compelled to issue NBWA against the petitioner to arrest him. Thereafter, he was arrested on 04/02/2024 and since then he has been detained in custody. In the meantime charge sheet has been laid.

12. In response to the submission of learned Senior Counsel that this is not a case of economic offence, but a contract between two individuals, I am not agree with his submission. Economic offences are a category of crimes that can harm a society's economy and financial stability. These offences can be committed by individuals or corporation with significant financial resources. The Indian Penal Code, classifies economic offences in three categories - theft, cheating and forgery. Economic offences not only victimize individuals with pecuniary loss but can also have serious repercussion on the national economy. In the case of Sunil Kumar Gupta vs. State of Delhi, reported in (1998) 0 Supreme (DEL) 599, it was held that the offence of cheating falls within the category of economic offence, wherein it reflects that the cheating will result in wrongful gain to the accused and wrongful loss to the complainant.

13. In the case of Sunil Dahiya v. State [(2016) 4 DLT (Cri) 593] it was held as follows -

"The nature and wavily of accusations against the accused, in my view, is serious. The grant of regular bail in a case involving cheating, criminal Page No.# 6/10 breach of trust by an agent, of such a large magnitude of money, affecting a very large number of people would also have an adverse impact not only in the progress of the case, but

also on the trust of the criminal justice system that people repose. It would certainly not be safe for the society. In case the applicant accused is granted regular bail, it is also likely that he may tamper with the evidence/witnesses, or even threaten them considering that the stake for the accused is high. It is also very much likely that looking to the high stakes, the nature and extent of his involvement, and his resources, he may flee from justice"

14. In the case of CBI vs. Ramendu Chattopadya (Criminal Appeal No. 1711 of 2019), the Hon'ble Supreme Court held that economic offences having deep rooted conspiracy involving investors money have to be taken seriously. The Hon'ble Supreme Court while dismissing the order of bail, despite filing of charge-sheet stated as follows -

"This Court is conscious of the need to view such economic offences having a deep rooted conspiracy and involving a huge loss of investors money seriously. Though further investigation is going on, as of now, the investigation discloses that the Respondent played a key role....thereby cheating a large number of innocent depositors and misappropriating their hard-earned money".

15. This Court is conscious about the fact that the Petitioner has been charged with several sections wherein Section 467 IPC is a grave offence punishable with life imprisonment. The judgment of Sanjay Chandra vs. CBI, reported in (2012) 0 AIR (SC) 830, is distinguishable from the present case as the charges in the said case carried a maximum punishment of 7 years, which is not the case herein. The same was also noted in Nittin Johari vs. SFIO (BA 1971/2019), wherein it was observed that:

"4. Ld. Sr. Counsel has submitted that investigation in the present case stands completed and even charge sheet has been filed by the investigating agency...Despite being CEO and a whole time Director, the petitioner was Page No.# 7/10 only an employee of BSL and has never been a shareholder or signatory of the Accounts of BSL. No financial benefit has accrued to the applicant from the allegedly fraudulent activities of BSL. Petitioner has only acted in his professional capacity as CFO of BSL. The work of the finance department was duly delegated, and each person was responsible for his scope of work. The petitioner was neither aware of nor involved in the alleged falsification of books or the alleged preparation and use of any forged and fraudulent documentation in any manner. It is further submitted that on number of occasions, the documents which came to him in the course of his work were already approved by the Board of Directors as well as by the Audit Committee and there was no reason for the petitioner to suspect any wrongdoing in such decision.

.....

16. Ld. Sr. Counsel has argued that investigation in the present case is complete. There are 284 accused persons and documents on which reliance has been placed are voluminous and trial may take considerable time and, therefore, the petitioner in view of the judgment of Hon'ble Supreme

Court in Sanjay Chandra's case (supra) be released on bail. However, the said case is distinguishable from the case in hand as the charges in the said case carried a maximum punishment for a term which may extend to seven years whereas in the present case, the petitioner is alleged to be involved in offence u/s. 36(c), 128, 129, 447, 448 of the Companies Act, 2013; u/s. 209, 211 r/w 628 of the Companies Act, 1956 and under Section 467, 468, 471 r/w Section 120B of the Indian Penal Code and one of the offences u/s. 467 IPC is punishable with imprisonment up to life"

16. The Hon'ble Supreme Court of India has held that filing of charge sheet does not lessen the allegations of the prosecution in any manner against the accused/petitioner. To the contrary, it establishes material on record against accused persons. (Virupakshappa Gouda vs. State of Karnataka [AIR 2017 SC 1685]). Similar pronouncements have been made in CBI vs. Ramendu Chattopadya and Nittin Johari (Supra).

17. In the case of Sunil Grover v State: [(2012) 3 DLT (Cri) 861], it was Page No.# 8/10 held as follows -

"12. So far as the judgments of the Apex Court in Sanjay Chandra's case and Suresh Kalmadi's case (supra) are concerned, no doubt, these reinforce and revisit the basic principles of law with regard to the grant of bail...In the cases, which have been cited by the learned counsel for the petitioner, no member of the general public was affected directly, rather it was the public ex-chequer which was put to loss by not holding auction of government resources or by over invoicing lenders. This is totally different from the facts of the present case where the petitioner floats advertisements and invites the offers from the members of the public to invest money in their schemes by promising them lucrative returns at regular intervals"

18. Coming to the question of parity in granting bail to other co-accused after filing of charge-sheet, it is pertinent to mention that both the accused namely, Nazrul Islam Talukdar and Mrinal Saikia were not part of the conspiracy. They were the employees of the accused Partha Bharadwaj and Partha Bharadwaj used to transfer money to their bank accounts. Hence, the role played by the present petitioner in the alleged fraud case and the allegation made against the co-accused Mrinal Saikia and Nazrul Islam are distinguishable to each other.

19. In Nanha vs. State of UP [1993 Cri.L.J. 938], the issue with regard to grant of bail on the basis of parity has been elaborately discussed, wherein it is observed as under:

"Parity cannot be the sole ground for granting bail even at the stage of second or third or subsequent bail applications when the bail applications of the co-accused whose bail application had been earlier rejected are allowed and co-accused is released on bail.

The Court has to satisfy itself that, on consideration of more materials placed, further developments in the investigation or otherwise and other different considerations,

there are sufficient grounds for releasing the applicant on bail."

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20. In the light of the above annunciation of law, it is clear that while deciding bail application on the ground of parity, following factors are relevant for consideration:

- (i) Parity cannot be the sole ground for granting bail even at the stage of second or third or subsequent bail applications.
- (ii) More materials placed before the Court with regard to the case, further developments in the investigation and other reasoned considerations may be considered as sufficient grounds for consideration.
- (iii) The Court is not bound to grant bail to an accused on the ground of parity even where the order granting bail to an identically placed co-accused contains reason, if the same has been passed in flagrant violation of well settled principles and ignoring the relevant facts essential for grant of bail.
- (iv) Failure of justice may be occasioned if bail is granted to an accused on the basis of parity with another co-accused whose bail order does not contain any reason.
- (v) If an order granting bail to co-accused is not supported by reasons, the same cannot form the basis of granting bail to an accused on the ground of parity.

21. Thus, in view of the aforesaid discussion, looking to the facts and circumstances of the present case and on the basis of the allegations and material available on record, without commenting on the merits of the case, in the considered opinion of this Court, it would not be appropriate at this stage to grant bail to the accused petitioner.

22. In the result, the bail application is rejected and disposed of Page No.# 10/10 accordingly.

JUDGE Comparing Assistant