Central Bureau Of Investigation vs Akhand Pratap Singh on 5 November, 2007

Equivalent citations: 146(2008)DLT93

Author: V.B. Gupta

Bench: V.B. Gupta

JUDGMENT

V.B. Gupta, J.

1. The petitioner has filed the present petition under Section 439(2) read with Section 482 CrPC, seeking cancellation of the bail granted to the respondent by Smt. I.K. Kochar, Spl. Judge, New Delhi.

2. As per the averments made in the present petition, the CBI has arrested the respondent in this case on 25th September, 2007 for offences punishable under Section 13(2) read with 13(1)(e) of the P.C. Act, 1988 and 120B read with 420, 467, 468 and 471 of IPC and he remained in police custody for 15 days and thereafter now he is in judicial custody.

3. Vide order dated 18th October, 2007, the learned Spl. Judge has granted bail to the respondent.

4. The respondent had been found to have influenced the witnesses and fabricated evidence in order to mislead the investigation agency. Subsequent to his arrest, he had made a disclosure statement, pertaining to forgery of documents such as wills, bank instruments and property related documents for acquiring immovable assets in various benami names and laundering his corrupt earning through bank accounts being operated in the names of various persons. The vital evidence, both documentary and oral, in continuation of these disclosures, is yet to be recovered/recorded. In these facts and circumstances of the matter, the order passed by learned Spl. Judge is bad in law, arbitrary and is liable to be set aside. So, it is prayed that bail granted to the respondent be cancelled.

5. In reply filed by the respondent it is stated that during the course of investigation, the respondent submitted numerous affidavits to the petitioner, in order to assist the investigation, in which he provided details regarding his immovable assets and their resources. In writ petition No. 2067/2005, filed by the respondent against the above mentioned FIR before the High Court of Allahabad at Lucknow, the respondent had been directed by the High Court to consider the explanation of the petitioner regarding the allegations against him and also not to make any arrest in the case without proper justifying material. The court also stated that there was no material to show that the respondent herein was likely to abscond from any process of law. More than 2 ½

years after lodging of the FIR and his having co-operated through out the investigation the respondent was arrested by the petitioner on 25th September, 2007 and thereafter he remained for 15 days in police custody, which is the maximum permissible period as per law. Throughout this period, the respondent underwent interrogation and co-operated with petitioner's investigation.

6. After hearing both the parties, the learned Spl. Judge has passed the impugned bail order and the bail order discloses due application of judicial mind to the facts of material on record. It is neither cryptic nor based on any extraneous factors and as such cannot be said to be perverse. The present case does not pertain to an offence of a heinous nature. Where two views are possible, the view favoring the accused should be taken. It is denied that respondent had influenced the witnesses or had fabricated the evidence. The present petition filed by the petitioner should be dismissed.

7. Learned Counsel for both the parties have advanced arguments at length.

8. Counsel for petitioner, in support of his contentions has also cited various judgments viz. Gurcharan Singh v. State AIR SC 179; Puran v. Ram Bilas and Ors. ; State v. Amardeep Singh Gill and State v. Capt. Jagjit Singh .

9. On the other hand, learned Counsel for the respondent cited Vashishtha Rambabu Andhale v. State of Maharashtra and Ors. IV (2004) CCR 397; Ramcharan v. State of M.P. (2006) 1 SCC(Cri) 511; Nityanand Rai v. State of Bihar and Anr. 2005 SCC (Cri) 1159; Puran v. Ram Bilas and Ors. (supra) and State of Haryana v. Bhajan Lal 1992 Crl.L.J.527.

10. The main grouse of the petitioner is that respondent has fabricated the evidence in order to mislead the investigation agency which is clear from the disclosure statement of the respondent and according to which, respondent has committed forgery of wills, bank instruments and other documents for acquiring immovable assets in various benami names. Further, the order passed by the learned Spl. Judge is perverse and is wrong and investigation is at crucial stage and keeping in view the conduct of the respondent, there is every likelihood that he will tamper with the evidence and in the given facts and circumstances of the case, the Spl. Judge ought not to have granted bail to the respondent. During the course of investigation it has come on record that the petitioner has acquired more than 80 benami properties and he has 100 bank accounts, which are yet to be verified.

11. On the other hand, it has been contended by learned Counsel for the respondent that, the FIR was registered in the year 2005 whereas, the respondent has been arrested in the year 2007 and during all this period he co-operated with the investigation agency. After arrest, the respondent remained in police custody for a maximum period i.e. 15 days and all the investigation has been completed and the learned trial court has considered all these facts while granting bail and also has imposed certain conditions on the respondent. Under these circumstances, it cannot be said that the order passed by the trial court is perverse and no ground is made out for cancellation of the bail.

12. It is well settled that while dealing with a bail application, the court should take into account the various considerations, such as-

(i) nature and seriousness of the offence;

(ii) the character of the evidence;

(iii) circumstances peculiar to the accused;

(iv) a reasonable possibility of the presence of the accused not being secured at the trial;

(v) reasonable apprehension of witnesses being tampered with;

(vi) the larger interests of the public or the State; and

(vii) similar other considerations which arise when a court is asked to admit accused to bail in a non-bailable offence.

13. Here in the present case, the trial court vide the impugned order granted bail to the respondent imposing certain conditions and the relevant portion of it read as under:

> Admittedly in this case the FIR has been registered under Section 13(1)(e) read with Section 13(2) of the PC Act on 19.3.05 i.e. two and a half years ago; the applicant had also approached the Hon'ble High Court of Allahabad under Article 226 of Constitution of India for the quashing of the FIR and the orders of the Hon'ble High Court of Allahabad while deciding that application and the obiter observations made therein have been perused wherein it has been held by the Hon'ble High Court of Allahabad as under:
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> This is not a grave offence like murder, dacoity, robbery or rape nor there is any terror stricken victim and there is also no instance of his ever been of violent behavior...since it is not borne out from any material on record that he is likely to abscond or evade the process of law.
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> The accused was admittedly in police custody for 15 days and the investigation by and large qua the applicant is complete; the accused had been taken to various places in India to confront him with the documentary as also other oral evidence; it is also not in dispute that the accused has furnished information on affidavits pursuant to the notices issued to him by the IO; it is also not the case of the prosecution that the applicant has not joined the investigation as and when he has been summoned. On the question of the apprehension of the prosecution about the possibility of tampering of evidence and the submission of ld. Spl. PP that some of the witnesses who are yet to be examined are located in Lucknow and one or two are also residing in Delhi, in my view, this can be met with by imposing a conditions on the applicant that he will not, if released on bail, enter the precincts of the Union Territory of Delhi or the Township of Lucknow.

> In the facts and circumstances of the case, keeping in view the period of custody and the fact that the investigation qua the present applicant is complete, the status of the accused being the erstwhile Chief Secretary of the State of U.P and a Senior IAS Officer who has his permanent roots in the country and as such there is little possibility of his fleeing from justice as also the fact that FIR having been registered almost two and a half years ago and in the first instance during the tenure of services of the accused, sanction for prosecution had admittedly been applied by the Investigating Agency but the same had been refused by the State of U.P., in my view, the accused is entitled to the grant of bail. The applicant/accused is accordingly released on bail on his furnishing a personal bond in the sum of Rs. 2,00,000/- with one surety of the like amount with the condition that he will not leave the country without the prior permission of the court; his passport, if not already deposited, will be deposited with the court; he will not tamper with the prosecution evidence; he will join the investigation as and when summoned by the IO; he will not visit the precincts of the Union Territory of Delhi and the Township of U.P till the time the witnesses stated to be stationed in the aforesaid places are examined by the IO. The applicant will also furnish an undertaking giving details of his complete whereabouts, his permanent place of stay, his contact numbers including his telephone and mobile numbers. It is further made clear that as and when accused changes his address, the same will be intimated to the court as also to the CBI.

14. Regarding cancellation of the bail under Section 439(2) CrPC, it is to be seen is whether the order granting bail was vitiated by any serious infirmity or not. It is well settled that very cogent and overwhelming circumstances are necessary for an order seeking cancellation of the bail. Even where prima facie case is established, the approach of the court is not that the accused should be detained by way of punishment, but whether the presence of the accused would be readily available for trial or that he is likely to abuse the discretion granted in his favor by tampering with evidence. The cancellation of bail necessarily involves the review of a decision already made and can by and large be permitted only, if by reason of supervening circumstances, it would be no longer conducive to a fair trial to allow the accused to retain his freedom during the trial. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and non-exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom. Where, ignoring the material and the evidence on record a perverse order granting bail is passed in a heinous crime and that too without giving any reasons, such order would be against the principles of law. Interest of justice would also require that such perverse order be set aside and bail be cancelled.

15. Here in the present case, the main grouse of the petitioner is that in his disclosure statement, the respondent has stated that in order to transfer certain properties, he plan to make a forged will and in order to prepare the will, he got stamp papers and got typed the contents of the will and forged the same. So, from the disclosure statement of the respondent recorded on 4th October, 2007 the

forgery, if any, has already been committed by the respondent prior to his arrest and for that he will be charge sheeted as per law, if required. There is nothing on record to show that after the impugned order was passed, the respondent has made any attempt to tamper with the evidence or to influence the witnesses.

16. The respondent has been arrested in this case on 25th September, 2007 and he has remained in police custody for a maximum period permissible under the law i.e. for 15 days and now he is in judicial custody. As respondent is in custody for about 1 ½ months and admittedly the FIR was registered more than 2 ½ years ago and the investigation is going to take long, so keeping in view the facts and circumstances of the case, I do not find any perversity or illegality in the impugned order passed by the learned Spl. Judge. The learned Spl. Judge has fully safe guarded the interest of the investigation agency by imposing stringent conditions at the time of passing of the bail order.

17. Under these circumstances, there is nothing on record to show, at this stage, that after the trial court has passed the bail order, the respondent had made any effort to tamper with the evidence or influence any of the witnesses while in custody. So there is no merit in the present petition and no ground is made out for cancellation of the bail.

18. However, it is made clear that if, after the release from judicial custody, the respondent tries to influence any of the prosecution witnesses or tamper with the evidence, then the petitioner will be at liberty to approach the trial court for the cancellation of the bail or modification of any of the conditions, imposed by the trial court.

19. With these observations, the present petition for cancellation of bail is dismissed and the stay granted on the operation of the order dated 18th October, 2007 of the learned trial court, by this Court, stands vacated.

20. Copy of this order be sent to the trial court forthwith.