

(1999) 04 AHC CK 0217

Allahabad High Court

Case No: Criminal Miscellaneous Bail Application No's. 14207 of 1997, 813, 9820, 10421, 15898 and 15934 of 1998, 3170 of 1999 and etc.

Dr. Balram Dutt Sharma

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: April 9, 1999

Acts Referred:

- Constitution of India, 1950 - Article 226
- Criminal Procedure Code, 1973 (CrPC) - Section 139, 436, 437, 437(3), 438
- Penal Code, 1860 (IPC) - Section 120B, 13(1), 13(2), 420, 467

Citation: (1999) CriLJ 3396

Hon'ble Judges: Syed Rafat Alam, J; S.K. Phaujdar, J

Bench: Division Bench

Advocate: Mithilesh Kumar Tewari, Kunwar Mridul Prakash, Y.S. Rathor, M.K. Tewari, R.P. Tripathi, S.K. Singh and J.S. Sengar, for the Appellant; Giridhar Nath, A.G.A., for the Respondent

Judgement

@JUDGMENTTAG-ORDER

1. All these present applicants have made prayers for bail in a matter which, in common parlance, is described as Ayurvedic scam in the State of U.P. The scam is under investigation by the CBI and the CBI Court is situated in Lucknow. There had been refusal of prayers for bail for these applicants by the CBI Court, Lucknow. Only thereafter the present applications were filed. A common question stands involved in all these matter as to whether the applications would lie at Allahabad or the applicants would be directed to move Lucknow Bench only,

2. In the case of Balram Datt Sharma the averments in the bail application indicate, that it related to Case No. RC 32(A)/96 CBI/SPE/LKO under Section. 120B 420467 468 and 471 IPC read with Section. 13(2) and 13(l)(d) of the Prevention of Corruption Act, relating to police station Kotwali, Lpcknow. The applicant was arrested by the CBI on

29-8-1997 at Lucknow in connection with the Ayurvedic scam after he was called for an interrogation and had come from his village Jagjeetpur, District Haridwar. An FIR in case Crime No. 373 of 1995 lodged at police station Civil Lines in the district of Meerut was annexed to this application to show that the place of occurrence of the alleged misappropriation, cheating and forgery was within the district of Meerut as per report by Dr. Shiv Raj Singh, Director, Ayurvedic and Unani Services, U.P. The CBI FIR was also annexed to this bail application further to say that this was lodged only in the year 1996, i.e. after the earlier mentioned FIR.

3. In the bail application for Dr. Vinay Kumar Sharma also the concerned CBI FIR was referred in which the prayer for bail was made.

4. In the case of Satya Pal Sharma again we find the same case referred in which the prayer for bail was made.

5. In the case of Sri Raj Narain Singh, again similar averments have been made in the bail application, as also in the cases of Ram Prakash Misra, Shiv Prakash Srivastava, Jagdish Prasad Sharma, Padam Datt Daundiya.

6. It appears that all these bail applications were placed before some or other single Bench and there had been an order on the applications of Padam Datta Daundiya, Shiv Prakash Srivastava, Dr. Balram Datt Sharma, Dr. Ram Prakash Misra and Sri Raj Narain Singh that the matter should be placed before the Hon'ble Chief Justice for constituting a larger Bench on the question whether these applications were entertainable at the principal seat at Allahabad or only at Lucknow Bench. Similar orders were made in the other applications also. As such, the present Division Bench is concerned only on the question of jurisdiction of the principal seat of the Allahabad High Court vis-a-vis the Lucknow Bench in connection with exercising jurisdiction to entertain the prayers for bail. It was contended by the learned counsel on behalf of the applicants that the causes of action in these cases arose at different districts beyond the jurisdiction of the Lucknow Bench and, as such, the Judges at the principal seat of Allahabad High Court would have jurisdiction in these matters to entertain the bail applications. The learned counsel for the CBI, however, argued that the initial FIR was lodged at Lucknow and the allegations indicated that the forgery in issuing allotment orders for withdrawal of different sums was made at Lucknow and only on the basis of such forged allotment order, consequential withdrawals were made in different districts and, as such, the Lucknow Bench alone would have the jurisdiction. It was further contended that the accused persons are being prosecuted on the basis of the FIR drawn up by the CBI and reports are being made to the CBI Court at Lucknow and on that score as well only the Lucknow Bench would have the jurisdiction in the matters. On behalf of the applicants, it was argued that in a number of similar cases bail applications were entertained at Allahabad and were disposed of and, as such, by precedent this, Court could exercise the jurisdiction.

7. The question of jurisdiction of Criminal Courts were considered in many cases and it would be relevant to refer to some of them. In CrI. Misc. Bail Application No. 13482 of 1998 the accused Dr. Chandra Bhushan Singh in the aforesaid Ayurvedic scam had made a prayer for bail before the Hon"ble single Judge sitting at Allahabad and the question of jurisdiction was also agitated before the Hon"ble Judge. The Hon"ble Judge referred to the decisions of the Supreme Court in [Sri Nasiruddin Vs. State Transport Appellate Tribunal](#), and in the case of [U.P. Rashtriya Chinni Mills Adhikari Parishad, Lucknow Vs. State of U.P. and others](#), The Hon"ble Judge quoted a part of the order of the Supreme Court in Nasiruddin's case on the question of meaning of the expression "in respect of cases arising in such areas in Oudh" in the first proviso to paragraph 14 of the United Province's High Courts (Amalgamation) Order, 1948. The Supreme Court explained in that decision that the expression "cause of action" in an application under Art. 226 of the Constitution would be as the expression is understood and if the cause of action arose because of an appellate order or the revisional order, which came to be passed at Lucknow, then Lucknow would have jurisdiction though the original order was passed at a place outside the areas in Oudh. It was observed that it might be that the original order was in favour of the persons applying for a writ. In such a case an adverse appellate order might be the cause of action. If the cause of action arose, wholly or in part, at a place within the specified Oudh area, Lucknow Bench will have jurisdiction. If the cause of action arose wholly within the specified Oudh area, it was indisputable that the Lucknow Bench would have exclusive jurisdiction in such matter. If it arose in part within the specified area in Oudh, it would be open to the litigant who has the dominos litis to have his forum convenient. The litigant had a right to go to the Court where a part of his cause of action had arisen. The Supreme Court further went on to say that if the cause of action could be said to have been arisen partly in the specified area of Oudh and partly outside, the litigant would have the choice to institute the proceeding either at Allahabad or at Lucknow. The concluding sentence may be quoted : "The Court will find out in each case whether the jurisdiction of the Court is rightly attracted by the alleged cause of action.

8. A reference was made to the case of Punit Kanodia decided by another single Judge of this High Court in which the FIR was lodged at Lucknow with the CBI. The charge-sheet was submitted before the Court at Lucknow and that Court had issued summonses and these summonses were under challenge under S. 482, Cr. P.C. and this Hon"ble single Judge decided that only the Lucknow Bench would have the jurisdiction in the matter. Reference may further be made to a decision of the Supreme Court reported in [Purushottamdas Dalmia Vs. The State of West Bengal](#), in which it was observed that a charge of criminal conspiracy and the offences committed in consequence of that conspiracy could be tried by the Court where the conspiracy has been committed. This case law was relied upon by the learned counsel for the CBI to impress that the conspiracy germinated at Lucknow by making a forged allotment order and that had gone to different offices in different

districts and consequential acts of cheating and misappropriation were committed. This decision may not be of much relevance so far the present controversy is concerned as the question is not whether Lucknow Bench or the CBI Court at Lucknow would have a jurisdiction to deal with the matter. We are confronted with a question whether the bail applications should be heard at Allahabad or not. The decision of the Supreme Court in the case of Nasiruddin would, in our view, be the guideline to determine the question of jurisdiction in the instant applications. The decision was given in respect of a writ petition and it was clearly indicated that if the cause of action for the grievance of the petitioner arose within the Oudh jurisdiction or even partly within it, the Lucknow Bench would have a jurisdiction over the matter. We, therefore, have really to see what is the cause of action for the present bail applications.

9. The very initiation of an FIR may not be deemed to be a cause of action for a bail application, at least in Uttar Pradesh where the provisions of anticipatory bail have been deleted from the Cr. P.C. Looking to the provisions in Chapter 33 of the Cr. P.C. concerning bail, it is found that in Section. 436 bail is spoken of on arrest or detention of a person. In Section. 437 also bail is spoken of when a person accused or suspected of a commission of a non-bailable offence is arrested or detained. Section 438 as stated above, speaks of anticipatory bail and this provision has been deleted so far Uttar Pradesh is concerned. The power of the High Court to grant bail is covered by Section. 139 and the language is as follows :

439. Special powers of High Court or Court of Session regarding bail.-

(1) A High Court or Court of Session may direct-

(a) that any person accused of an offence and in custody be released on bail, and if the offence is of the nature specified in Sub-section (3) of Section. 437, may impose any condition which it considers necessary for the purposes mentioned in that sub-section.

(2) that any condition imposed by a Magistrate when releasing any person on bail be set aside or modified:

Provided that....

10. It appears that the High Court could grant bail to a person who is accused of an offence and is in custody. Thus, the cause of action for bail might be differentiated from a cause of action for writ petition and cause of action for a bail may not arise on the lodging of an FIR unless a particular person is arrested or detained in custody. The materials on record indicated that although FIRs are there in different districts touching the present applicants, the basic or the parent FIR is the one lodged by the CBI upon which only the investigation was taken up and there is nothing on record to show that investigation was made separately in the different FIRs in the districts. They were detained admittedly in relation to the CBI FIR as is

clear from the averments made in each individual bail applications. Thus, the cause of action for every applicant would be or is when he was detained in connection with the investigation/charge-sheet in the CBI FIR that was lodged at Lucknow. Seen in this light, the cause of action is only within the jurisdiction of the Lucknow Bench of the Allahabad High Court. We are of the view that in this case the Judges at the principal seat of the Allahabad High Court may not exercise jurisdiction in view of the provisions of the Amalgamation Order and the explanation thereof by the Supreme Court in Nasiruddin's case.

11. The points referred to us stand answered as above. The matters may now be laid before the appropriate Bench at Lucknow for consideration of the bail applications on merit.