Dhullu Mahto Vs The State of Jharkhand

Court: Jharkhand High Court

Date of Decision: Nov. 13, 2013

Citation: (2014) 1 AJR 537

Hon'ble Judges: S. Chandrashekhar, J

Bench: Single Bench

Advocate: Anil Kumar Sinha, for the Appellant; R. Mukhopadhyay, S.C. II and Mr. Ravi Prakash, Assistant Public Prosecutor, for the Respondent

Judgement

S. Chandrashekhar, J.
This is the second attempt by this applicant seeking grant of bail. He is a member of the Legislative Assembly

(MLA). From the First Information Report, it appears that an information was received in the police station on 12.05.2013 that, one Rajesh Gupta

who was an absconding accused in Baghmara (Barora) P.S. Case No. 121 of 2013 dated 22.04.2013 registered under sections 384 and 386

IPC had come to his house. On receiving such information, the police party proceeded to apprehend the said accused. When the police force

reached near his house, the said Rajesh Gupta tried to escape however, he was apprehended by the police and the police party proceeded to take

the apprehended accused to the police station. In the meantime, the present applicant along with several other persons and his supporters

surrounded the official police vehicle and attacked the police party. The present applicant with the help of others forced open the door of the

police vehicle and dragged out the policemen from the vehicle and started abusing them and initiated a scuffle. The present applicant tried to snatch

the service pistol of the informant and he torn the uniform of the police constable namely, Ram Bachan Ram. It is also alleged that the present

applicant/accused Dhullu Mahto asked the informant to show the warrant of arrest and when the warrant was shown to him, he retorted that he

does not recognise any ''Court-Kutchari'' and thereafter, the present applicant along with others took away the accused namely, Rajesh Gupta out

of the lawful custody of the police and escaped. On the same day at about 14.15 hours, an information was given in the police station and the

F.I.R. being Katras P.S. Case No. 120 of 2013 was registered against the present applicant and others under Sections 147, 148, 149, 224, 225,

283, 290, 323, 332, 341, 353, 427 and 504 of the Indian Penal Code.

2. The learned Senior counsel appearing for the applicant has submitted that after the refusal of bail to the applicant by order dated 14.08.2013, a

charge-sheet has been filed on 20.08.2013 and other co-accused persons have been granted bail by order dated 21.09.2013 and since the

allegations levelled against the co-accused persons are identical, the applicant is also entitled for grant of bail. He has further submitted that in so far

as, the offences alleged against the applicant in the charge-sheet are concerned, maximum punishment prescribed is three years and the offences

are triable by Magistrate and thus, in this view of the matter, the applicant who is in judicial custody since 09.07.2013, should be granted bail. He

has further submitted that the applicant has filed supplementary affidavit dated 18.10.2013 in which he has explained the circumstances under

which he was sent for treatment at All India Institute of Medical Sciences, New Delhi. The applicant never requested for being sent to New Delhi

for medical treatment. He has further submitted that the present case is the outcome of long standing enmity between the Deputy Superintendent of

Police who is posted there and against whose illegal demand the applicant who is the M.L.A. of the area has been raising protest and in this

connection the applicant has lodged complaints and representation to His Excellency, the Governor of the State of Jharkhand.

3. Mr. Ravi Prakash, learned A.P.P. appearing for the State has resisted the prayer for grant of bail and submitted that by order dated

14.08.2013, the prayer for grant of bail has been rejected on merits. There is no fresh ground available to the applicant for renewing his prayer for

grant of bail. He has submitted that grant of bail to other co-accused would not entitle the applicant to seek bail in the present case as, there are

specific allegations against the applicant levelled in the First Information Report and therefore, he cannot claim parity. After investigation the

allegations against the applicant have been found true and a charge-sheet has been filed in the present case. He has disputed the plea taken by the

accused for visiting New Delhi by submitting that, on 30.07.2013 the application being I.A. No. 5196 of 2013 filed in BA. No. 7143 of 2013 was

pressed by the learned counsel for the applicant, seeking early hearing of the bail application on the ground of his illness. In the said application, the

accused had taken the plea that since he was in jail custody, he was unable to undertake proper treatment and due to the same his condition was

worsening day by day. The learned counsel has submitted that after the charge-sheet was filed, the applicant again moved bail application in the

lower court which also has been rejected by order dated 07.09.2013.

4. The record of B.A. No. 7143 of 2013 has been placed on record along with the record of the present case.

5. On perusal of the documents on record, I find that the present application was filed on 12.09.2013 however, as the entire facts were not

disclosed by the applicant in the bail application, an order was passed on 27.09.2013, when the matter was posted for hearing, directing the

applicant to place on record all the orders passed in the applications filed by the applicant in other Court/Courts.

6. From the record, it appears that the applicant had earlier moved for grant of Anticipator Bail before the learned District and Additional Sessions

Judge-III, Dhanbad who rejected the prayer by order dated 17.06.2013 by recording as under:

Be that as it may the allegation against the petitioner appears to be serious in nature and is a threat to the law and order situation in the locality in

general and to the administration in particular. Larger interest of the smooth functioning of the administrative machinery does not permit me to

render any short of latitude to this type of person having no regard for the rule of law. Thus, I am not inclined to grant anticipatory bail to the

petitioner. Hence the prayer for anticipatory bail of the petitioner Dhullu Mahato stands rejected. Accordingly, the order as to stay of execution of

W/A against this petitioner stands vacated.

7. It is observed that the learned Sessions Judge found that there were as many as 28 criminal cases of heinous nature registered against the

applicant. Thereafter, the applicant moved this Court in A.B.A. No. 2683 of 2013 which was dismissed by order dated 04.07.2013 as having

become infructuous. The applicant moved an application for grant of bail which was dismissed on merits by order dated 17.07.2013 and

thereafter, the applicant moved this Court by filing the B.A. No. 7143 of 2013. By order dated 14.08.2013 the application for grant of bail

preferred by the applicant was dismissed on merits and the plea for grant of bail on the ground of illness of the applicant was also rejected

specifically by this Court. This Court observed as under:

8. A perusal of the document (Annexure-3) which is filed along with supplementary affidavit dated 27.07.2013 discloses the brief medical history

of the present applicant. The medicines prescribed by the doctor are all general and routine medicines relating to abdominal pain. The diagnosis

shows Chronic Colitis and the document dated 08.08.2013 which has been tendered in the Court indicates that a Colonoscopy & Segmental

Biopsy of the present applicant has been advised by the doctor, from the All India Institute of Medical Sciences, New Delhi as these facilities are

not available at Ranchi. The documents provided and filed in this proceeding do not indicate any serious ailment to the applicant.

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10. At this stage, the learned counsel for the present applicant made a prayer to permit the applicant to get the investigation done as referred above

from the All India Institute of Medical Sciences, New Delhi. I am inclined to grant two days" time to the present applicant but, the learned counsel

appearing for the applicant submitted that two days" time would not be sufficient for getting the investigation done. However, I am not inclined to

grant time more than two days to the applicant as the tests prescribed by the doctors would not take even two hours.

8. The learned Senior Counsel appearing for the applicant has submitted that the applicant was not at all ready to go to New Delhi for medical

check up however, under the pressure of the State Authorities, he was sent to New Delhi for treatment.

9. In the supplementary affidavit dated 18.10.2013, the applicant has stated as under:

10. That I say that after the rejection of the petitioner"s bail application by this Hon"ble Court on 14.08.2013, the health of the petitioner

deteriorated further. Thereafter, on the advice of the jail doctor, the petitioner was treated by the doctors at Patliputra Medical College and

Hospital, Dhanbad who, after constituting a medical board, referred the petitioner to Rajendra Institute of Medical Science, Ranchi. At this

juncture it may pertinently be mentioned that the petitioner was inter alia required to get colonoscopy and segmental autopsy tests done but the

Rajendra Institute of Medical Sciences, Ranchi also did not have the instruments and specialization to carry out the aforesaid tests and therefore,

the Director, RIMS, Ranchi constituted a medical board under his chairmanship and thereafter recommended the petitioner to be taken to All India

Institute Medical Sciences, New Delhi.

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12. That I say that the petitioner had not in any manner applied or requested any of the doctors or officials to refer him to AIMS. As a matter of

fact, despite the recommendation of the medical board of PMCH, Dhanbad and RIMS, Ranchi, the petitioner did not move any application before

any authority for taking him to AIMS and continued to be in jail. The condition of the petitioner kept on deteriorating and the only thereafter the Jail

Superintendent applied before the court concerned for permission to take the petitioner to AIMS and consequently, the learned court below by an

order dated 13.08.2013 allowed the said prayer. Even thereafter, the petitioner had not volunteered to go to AIMS but it was only in the month of

September, 2013 when the petitioner"s condition deteriorated further, the Jail Superintendent sent the petitioner to AIMS, New Delhi under

custody. The petitioner was accompanied by one Sub-Inspector, one Head Constable and four armed guards.

13. That I say that the petitioner was refused admission by AIMS but was being treated by the Out Patient Department at AIMS and therefore,

had to be lodged at Jharkhand Bhawan, Delhi. During his stay at Delhi, the petitioner had undergone many medical tests and as a matter of fact,

has been advised by the doctors at AIMS to visit again on 24.10.2013 for colonoscopy which could not be done earlier.

10. I find that the plea taken by the applicant in paragraph Nos. 10, 12 and 13 of the supplementary affidavit dated 18.10.2013, is apparently false

for the following reasons:

(i) I.A. No. 5196 of 2013 was filed in B.A. No. 7143 of 2013 seeking early hearing of the bail application on the ground of illness of the present

applicant. However, by order dated 30.07.2013, I.A. No. 5196 of 2013 was dismissed.

(ii) The applicant was refused admission in AIIMS because he is not suffering from any serious ailment, still he stayed at Delhi where he was seen

drinking and partying.

(iii) Once by order dated 14.08.2013, the prayer for grant of bail on the ground of illness of the applicant was rejected, it was not open to the

applicant to avail of the alleged permission granted by order dated 13.08.2013,

(iv) From the medical prescription attached in the supplementary affidavit, it appears that the applicant visited AIMS on 19.09.2013. He again

visited AIIMS, New Delhi on 03.10.2013. The OPD Card of AIIMS discloses that the applicant was advised review after two months and he

was advised to take hygienic fresh food and Ishabgol hask, which would clearly demonstrate that the applicant was not suffering from any serious

illness, still he stayed there for weeks altogether.

11. From the aforesaid, it is apparent that the applicant has taken a false plea in the supplementary affidavit dated 18.10.2013. Even though, the

applicant was not suffering from any serious ailment and such a finding was recorded by this Court in order dated 14.08.2013, he managed to go

to New Delhi where he was seen drinking and partying. The conduct of the applicant displays an outrageous defiance of the order passed by this

Court on 14.08.2013. I find that in the First Information Report also an allegation has been levelled against the applicant that when the warrant of

arrest was shown to him, he retorted by saying that he does not recognise any "Court-Kutchari.

12. Adverting to the plea of parity raised by the learned Senior counsel for the applicant, I am of the opinion that the applicant"s case stands on an

entirely different footing and merely because other co-accused persons have been granted bail, the prayer for grant of bail to the applicant cannot

be accepted.

13. The learned Senior counsel appearing for the applicant relying on the decision of the Hon''ble Supreme Court in Sanjay Chandra Vs. CBI,

contends that in view of the gravity of offence and severity of punishment, the applicant who is in judicial custody since 09.07.2013 is entitled for

grant of bail. He laid stress on paragraph Nos. 21-24, 30, 32, 38, 40 and 46 of the judgment in ""Sanjay Chandra"" (supra) which are quoted

below:

21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused

person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a

punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to

the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time

to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such

cases, ""necessity"" is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution

that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be

deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.

23. Apart from the question of prevention being the object of refusal of bail, one must not lose sight of the fact that any imprisonment before

conviction has a substantial punitive content and it would be improper for any court to refuse bail as a mark of disapproval of former conduct

whether the accused has been convicted for it or not or to refuse bail to an unconvicted person for the purpose of giving him a taste of

imprisonment as a lesson.

24. In the instant case, we have already noticed that the ""pointing finger of accusation"" against the appellants is ""the seriousness of the charge"". The

offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the

appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no

doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor: the other factor that also

requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of

Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather ""recalibrating the scales of

justice"".

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30. In Gurcharan Singh v. State (Delhi Admn.) this Court took the view:

22. In other non-bailable cases the court will exercise its judicial discretion in favour of granting bail subject to sub-section (3) of Section 437

Cr.P.C. if it deems necessary to act under it. Unless exceptional circumstances are brought to the notice of the Court which may defeat proper

investigation and a fair trial, the Court will not decline to grant bail to a person who is not accused of an offence punishable with death or

imprisonment for life. It is also clear that when an accused is brought before the Court of a Magistrate with the allegation against him of an offence

punishable with death or imprisonment for life, he has ordinarily no option in the matter but to refuse bail subject, however, to the first proviso to

Section 437(1) Cr.P.C. and in a case where the Magistrate entertains a reasonable belief on the materials that the accused has not been guilty of

such an offence. This will, however, be an extraordinary occasion since there will be some materials at the stage of initial arrest, for the accusation

or for strong suspicion of commission by the person of such an offence.

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24. Section 439(1) Cr.P.C. of the new Code, on the other hand, confers special powers on the High Court or the Court of Session in respect of

bail. Unlike u/s 437(1) there is no ban imposed u/s 439(1) Cr.P.C. against granting of bail by the High Court or the Court of Session to persons

accused of an offence punishable with death or imprisonment for life. It is, however, legitimate to suppose that the High Court or the Court of

Session will be approached by an accused only after he has failed before the Magistrate and after the investigation has progressed throwing light on

the evidence and circumstances implicating the accused. Even so, the High Court or the Court of Session will have to exercise its judicial discretion

in considering the question of granting of bail u/s 439(1) Cr.P.C. of the new Code. The overriding considerations in granting bail to which we

adverted to earlier and which are common both in the case of Section 437(1) and Section 439(1) Cr.P.C. of the new Code are the nature and

gravity of the circumstances in which the offence is committed; the position and the status of the accused with reference to the victim and the

witnesses; the likelihood, of the accused fleeing from justice; of repeating the offence; of jeopardising his own life being faced with a grim prospect

of possible conviction in the case; of tampering with witnesses; the history of the case as well as of its investigation and other relevant grounds

which, in view of so many valuable factors, cannot be exhaustively set out.

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32. In Moti Ram v. State of M.P., this Court, while discussing pretrial detention, held:

14. The consequences of pretrial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations

of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is

prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent

members of his family.

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38. In State of U.P. v. Amarmani Tripathi this Court held as under:

18. It is well settled that the matters to be considered in an application for bail are (i) whether there is any prima facie or reasonable ground to

believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction;

(iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi)

likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice

being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi and Gurcharan Singh v. State (Delhi Admn.)]. While a vague allegation that

the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere

presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the

evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in in Kalyan Chandra

Sarkar v. Rajesh Ranjan: (SCC pp. 535-36, para 11)

11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and

not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the

case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly

where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind.

It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.

(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.

(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh and Puran v. Rambilas.)

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22. While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and

no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary.

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40. The grant or refusal to grant bail lies within the discretion of the court. The grant or denial is regulated, to a large extent, by the facts and

circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community

against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of

keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after

conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required.

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46. We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that

the offences alleged, if proved, may jeopardise the economy of the country. At the same time, we cannot lose sight of the fact that the investigating

agency has already completed investigation and the charge-sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their

presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail

pending trial on stringent conditions in order to ally the apprehension expressed by CBI.

14. From the aforesaid discussion in ""Sanjay Chandra"" (supra), I find that the Hon''ble Supreme Court has enunciated the general law relating to

grant of bail and it has been held by the Hon''ble Supreme Court that parameters for grant of bail cannot be fixed in a straight jacket formula and a

prayer for grant of bail has to be decided in the facts and circumstances of the particular case.

15. From discussion in State Vs. Amarmani Tripathi, on which learned Senior Counsel has placed reliance, I find that in the said judgment the

Hon''ble Supreme Court has held that one of the considerations for grant of bail would be character, behaviour, means, position and standing of

the accused and likelihood of the offence being repeated. The present applicant has been made accused in as many as 28 cases. At this stage,

learned Senior counsel appearing for the applicant has submitted that in 17 cases the applicant has been acquitted from the criminal charges

however, he is not in a position to dispute that in most of the cases he has been acquitted because the witnesses turned hostile.

16. In State of Rajasthan, Jaipur Vs. Balchand alias Baliay, the case which has been considered by the Hon''ble Supreme Court in paragraph No.

28 in ""Sanjay Chandra"" (supra), the Hon''ble Court while enumerating ''repeating offences'' as one of the circumstances which should be taken into

consideration while deciding a prayer for grant of bail, has observed as under:

2. The basic rule may perhaps be tersely put as bail, not jail, except where there are circumstances suggestive of fleeing from justice or thwarting

the course of justice or creating other troubles in the shape of repeating offences or intimidating witnesses and the like, by the petitioner who seeks

enlargement on bail from the court. We do not intend to be exhaustive but only illustrative.

17. In Kalyan Chandra Sarkar Vs. Rajesh Ranjan @ Pappu Yadav and Another, the Hon''ble Supreme Court took note of the conduct of the

accused and observed as under:

8. In the normal course one would have expected an accused whose bail has been cancelled and who was intending to make an application for

grant of bail to behave in a manner not to give any room for the prosecution to contend that he has been misusing the facilities available to him in

law while he is in jail. But it seems, it is not the attitude of the respondent.

9. ...The said order of the High Court granting bail was challenged before this Court by the complainant and the investigating agency (CBI) but

what happened in between is worth noticing. On 26-9-2004 when the respondent was out of jail because of the bail granted by the High Court, he

instead of getting himself treated for the ailment which he was complaining of, it is alleged that he was hosting a party for his co-prisoners in the jail

late in the night of that day. While the authorities in the reports submitted pursuant to the directions issued by this Court did not admit that a party

was given by the accused on 26-9-2004 they did admit that between 9.30 p.m. to 10.00 p.m. on that night the respondent did unauthorisedly visit

the jail contrary to all restrictions on the entry to the jail under the Jail Manual. A complaint in regard to this unauthorised entry of the respondent to

the prohibited areas of the jail premises is registered and based on the direction issued by the High Court of Patna, an investigation is going on in

this regard and some of the jail authorities have been transferred.

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16. Thus the material recorded hereinabove shows that the respondent has absolutely no respect for the rule of law nor is he in any manner afraid

of the consequences of his unlawful acts. This is clear from the fact that some of the acts of the respondent recorded hereinabove have been

committed even when his application for grant of bail is pending.

18. I find that the High Court has power to cancel bail even in cases, in which a person is accused of offences which are bailable Talab Haji

Hussain Vs. Madhukar Purshottam Mondkar and Another, and therefore, I find no substance in the contention based on gravity of offence and

severity of punishment. The Sessions Court while rejecting the application for grant of anticipator bail has observed that the allegation against the

applicant is a threat to law and order situation.

19. On the previous occasion while rejecting the prayer for grant of bail, this Court has observed that the act of the applicant would amount to

waging war against the authority of the State. In view of the aforesaid, I find no merit in the bail application and accordingly, it is dismissed.

20. However, the matter cannot be closed at this stage. From the records of the case and the events which took place after the applicant

surrendered in the Court, I hold a prima-facie opinion that the government officials including, the doctors and jail authorities colluded with the

applicant in as much as, they prepared a false report and tried to mislead the Court. I hereby direct the Principal District Judge, Dhanbad to take

into custody the entire case record of this case forthwith and conduct an enquiry and submit a report in sealed cover within 4 weeks on the

following points:

(i) What was the material with respect to illness of the applicant placed before the Court which passed order dated 13.08.2013,

(ii) When the order dated 14.08.2013 was produced before the said Court, what action was taken by the Court thereafter, and

(iii) Complete narration of events which led to order dated 13.08.2013.

21. Issue notice to the Principal Secretary, Department of Home to file a specific affidavit on the following points:

(i) Under what circumstances, the applicant was permitted to move to New Delhi,

(ii) When a front page report was published in the newspaper and this matter was brought to the notice of general public that the applicant was

seen partying at New Delhi, what steps were taken by the State Authorities, and

(iii) Why this matter should not be referred to Central Bureau of Investigation (C.B.I.) for conducting an investigation to find out complicity of other

officials in the matter.

Call the matter after four weeks.