

(2010) 09 JH CK 0059

Jharkhand High Court

Case No: Criminal M.P. No. 715 of 2009

Shri Phulchand Tirkey

APPELLANT

Vs

The Central Bureau of
Investigation, Smt. Sandhya Rani
Mehta and Sri Rukhsar Ahmad

RESPONDENT

Date of Decision: Sept. 6, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 438
- Penal Code, 1860 (IPC) - Section 120, 120B, 201, 302, 304

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Narendra Nath Tiwari, J.

In this petition, the Petitioner has prayed for cancellation of bail granted to the Opposite Party Nos. 2 and 3, namely, Sandhya Rani Mehta and Rukhsar Ahmad, in A.B.P. No. 167 of 2009 and A.B.P. No. 184 of 2009, respectively, by common order dated 4th April, 2009 passed by learned Additional District & Sessions Judge-VIII-cum-Special Judge, C.B.I., Dhanbad in connection with R.C. Case No. 1(s) of 2007, registered under Sections 120B, 323, 304 and 343 of the Indian Penal Code.

2. It has been stated that the case was registered against the Opposite Party Nos. 2 and 3, who happen to be City Deputy Superintendent of Police and Officer-in-charge of police station, for custodial death of Manraj Tirkey, son of the Petitioner. It has been alleged that on 22nd December, 2005 the police Illegally took away said Manraj Tirkey and kept him in custody for several days. He was allegedly brutally assaulted and tortured by the City Deputy Superintendent of Police-Opposite Party No. 2 and Officer-in-charge of the police station-Opposite Party No. 3. When his

condition started deteriorating, A.S.I., namely, Upendra Narayan Singh got the deceased hospitalized in Bokaro General Hospital on 28th December, 2005, where he died in course of treatment on 31st December, 2005.

3. A writ petition, being W.P. (PIL) No. 1654 of 2006, was filed by one Mukti Tirkey, General Secretary of Adivasi Mahasabha in this Court. The said writ petition was finally disposed of on 22nd December, 2006, directing the Central Bureau of investigation to enquire and investigate the case.

4. On the basis of the aforesaid direction of this Court, C.B.I. registered a case under Sections 304 and 34 of the Indian Penal Code on 25th January, 2007 against three accused persons, namely, Sandhya Rani Mehta, Rukhsar Ahmad and Upendra Narayan Singh. The C.B.I. after investigation submitted charge sheet against two accused persons, namely, Rukhsar Ahmad-Sub Inspector of Police and Upendra Narayan Singh-Assistant Sub Inspector of Police under Sections 120B, 323 and 343 of the Indian Penal Code, while clean-chit was given to accused Sandhya Rani Mehta-Opposite Party No. 2.

5. Learned Sub Divisional Judicial Magistrate-cum-Special Judicial Magistrate, C.B.I., after perusal of the case record, including the case diary, clinical history sheet, postmortem report and Polly graphic report, took cognizance of the offence under Sections 120B, 323, 343 and 304 of the Indian Penal Code against three accused persons, namely, Sandhya Rani Mehta-City Dy. S.P., Rukhsar Ahmad-S.I. and Upendra Narayan Singh-A.S.I. by order dated 9th February, 2009 and directed to issue summons against the said accused persons.

6. On 24th February, 2009, an application for anticipatory bail, being A.B.P. No. 167 of 2009, was filed by Sandhya Rani Mehta-Opposite Party No. 2 and another application for anticipatory bail, being A.B.P. No. 184 of 2009, was filed by Rukhsar Ahmad-Opposite Party No. 3. After hearing the parties, learned Additional District & Sessions Judge-VIII-cum-Special Judge, C.B.I., Dhanbad granted anticipatory bail to the accused persons, namely, Sandhya Rani Mehta and Rukhsar Ahmad.

7. The Petitioner has sought cancellation of bail of the opposite parties on the following grounds:

(i) The accused persons, being police officers are highly influential persons and they are threatening the Petitioner and other family members with dire consequences for proceeding with the case against them.

(ii) The accused persons are tampering with the evidences, as they have also done in post.

(iii) The anticipatory bail petition was itself not maintainable because the C.B.I. had not submitted charge sheet against Sandhya Rani Mehta-Opposite Party No. 2 and against other two accused persons was under bailable sections of the Indian Penal Code.

8. Almost all the prosecution witnesses, Polly graphic test, documents and strong circumstance fully support the case of the prosecution, which go to show prima facie direct involvement of the accused persons in heinous crime. Sub Divisional Judicial Magistrate-cum Special Judicial Magistrate, Dhanbad, after applying complete judicial mind, has taken cognizance of the offence against the accused persons.

9. Notices were issued to the opposite parties. They have appeared and separately filed their counter affidavit. However, the same are in same line, stating that the order, granting anticipatory bail, was passed by the Special Judge, C.B.I. Dhanbad after detailed hearing of the parties and recording reasons in detail. The opposite parties have never tried to interfere with the course of Justice nor have ever attempted to tamper with the evidences. The Investigation has been done by an independent agency-C.B.I. and all the evidences have been collected and now there is no question of tampering with the evidence. The opposite parties are in permanent government service. There is no chance of their absconding. They had applied for anticipatory bail, when learned Sub Divisional Judicial Magistrate-cum-Special Judicial Magistrate, C.B.I. took cognizance of the offence under Sections 304, 323, 343 and 120 of the Indian Penal Code.

10. During the course of investigation by the C.B.I., a Board of doctors from All India Institute of Medical Science, New Delhi was constituted to ascertain the cause of death. They have not found that the death of Manraj Tirkey was due to beating or any kind of torture, Besides that none of the documents, including the postmortem report, inquest report and treatment record as mentioned above, no external or internal injury was found on the person of the deceased.

11. Learned Additional District & Sessions Judge-cum-Special Judge, C.B.I., Dhanbad after due consideration of the facts and circumstances of the case and record and after hearing the parties has granted bail to the opposite parties, directing the Opposite Party No. 2 to deposit her passport and furnish security.

12. Learned Counsel for the Petitioner, on the one hand, led stress on the cancellation of bail and, on the other hand, prayed for setting aside the order, granting anticipatory bail to the opposite parties, on the ground that learned Special Judge, C.B.I. has not taken into consideration the relevant materials, statements of 14 witnesses during their investigation, Polly graphic test and other documents as well as strong circumstance appearing on record against the opposite parties, making out prima facie case u/s 304 of the Indian Penal Code and other sections of the Indian Penal Code, in support of the said submissions, learned Counsel referred to and relied upon the following decisions of the Supreme Court:

(i) Vaman Narain Ghiya v. State of Rajasthan AIR2009 SCW 785.

(ii) State of Maharashtra, etc. v. Dhanendra Shriram Bhurle, etc. AIR2009 SCW 1245.

(iii) Ashok Kumar v. State of U.P. and Anr. AIR2009 SCW 1529.

(iv) Subodh Kumar Yadav v. State of Bihar and Anr. AIR2009 SCW 7299.

(v) Gajanand Agarwal v. State of Orissa and Ors. AIR 2006 SCW 4753.

(vi) Anil Kumar Tulsyani v. State of U.P. and Anr. AIR2006 SCW 4339.

(vii) Brij Nandan Jaiswal v. Munna @ Munna Jaiswal and Anr. AIR2009 SCW 134.

13. Learned Counsel for the opposite parties, on the other hand, submitted that the learned Special Judge, C.B.I. has considered all the facts and materials on record and has recorded a detailed opinion before granting bail to the opposite parties. The Petitioner has made wild and vague allegation of tampering with the evidence and threatening the Petitioner and others, No such complaint was ever made either before the police or before the C.B.I., as there is absolutely no iota of truth in the said allegation, The Petitioner could have also brought notice to the learned Trial Court, who could have enquired the allegation through an independent agency. Learned Counsel further submitted that once bail is granted to a person, the same cannot be lightly cancelled on bare wild allegation without any supporting material on record. For depriving a person from liberty given by an order of the Court of Law, there must be substantial ground based on cogent material, The opposite parties are responsible government officers, They are ready to take trial. There is no complain of jumping or misusing the privilege of bail, All the allegations are wholly baseless and malicious, The opposite parties have applied for bail after cognizance of the offence u/s 304 of the Indian Penal Code was taken and summonses were issued, as there is reasonable apprehension of being arrested in connection with the case registered under non-bailable sections. The Petitioner's grounds for assailing the order of the learned Special Judge, C.B.I. are frivolous and baseless.

14. Having heard learned Counsel for the parties, I considered the facts and materials on record and submissions made by them. In support of the prayer for cancellation of bail, learned Counsel for the Petitioner relied on the decision of the Supreme Court in Subodh Kumar Yadav (Supra). In that case, the Supreme Court had dismissed the appeal filed against the order of cancellation of bail passed by the learned Sessions Judge and affirmed by the High Court. The Court took notice of the earlier decisions and observed that for cancellation of bail conduct subsequent to release on bail and supervening circumstances will be relevant. But there is no restriction on the power of the superior Court to cancel bail in appropriate cases on other grounds. If the superior Court finds that the Court granting bail had acted on irrelevant material and if there was non-application of mind and failure to take note of any statutory bar to grant bail or If there was manifest impropriety as for example failure to hear the public prosecutor/complainant where required, an order for cancellation of bail can be passed. In the instant case, I find no material in support of any contrary conduct of the opposite parties subsequent to the order, granting them bail by the learned Special Judge, C.B.I. Though the Petitioner has

alleged that the opposite parties have been threatening him and other family members, no document has been brought on record to show that any complaint or threat was made either before the local police or the C.B.I. or before the learned Trial Judge, who would have directed for an enquiry and pass suitable orders. The Petitioner's said allegation has been emphatically denied by the Opposite Party Nos. 2 and 3. In view of the assertion and denial, there must have been some material to support the allegation, I find no such material on record in support of the said allegation. So far as other grounds are concerned, the same have also not been supported by any specific material.

15. In support of the prayer for setting aside the order granting bail, learned Counsel relied on other decisions of the Supreme Court referred to above in Paragraph-12 of this order.

16. In Vaman Naraian Ghiya's case (Supra), the Supreme Court has held that the Court granting bail must see that the applicant has reason to believe that he may be arrested in a non-bailable offence. The reason must be founded on reasonable grounds. Mere fear is not belief and not enough for such applicant. In the instant case, the opposite parties have been granted bail after the cognizance u/s 304 and other sections of the Indian Penal Code was taken and the Magistrate passed order for issuance of summons. In that case, the opposite parties, being the government officers, certainly have reasonable apprehension of being arrested in connection with the case under non-bailable sections of the Indian penal Code.

17. In State of Maharashtra, etc. (Supra), the Supreme Court has held that the bail granted in disregard to relevant consideration is liable to set aside, Here, I find that the learned Special Judge has given reasons in detail much more than required.

18. In Ashok Kumar's case (Supra), the Supreme Court has said that definite conclusion should not be given on any point at the stage of bail, but the Apex Court refused to cancel bail, as the accused were on bail for considerable length of time. I find no relevancy of this decision to support the Petitioner's prayer.

19. In Gajanand Agarwal's case (Supra), the Apex Court has held that though detailed examination of the evidence and elaborate documentation of the merits of the case has to be avoided by the Court while passing orders on bail applications, yet a Court dealing with the bail application should be satisfied as to whether there is a prima facie case. In the instant case, learned Special Judge, C.B.I. has recorded detailed reasons for his satisfaction and for granting bail to the opposite parties.

20. In Anil Kumar Tulsiyani's case (Supra), the Supreme Court considered the bail granted to an accused, who was an advocate and who allegedly shot dead caused in his bedroom, the High Court has not recorded the mitigating circumstance, which warranted it to grant bail in such a grave offence under Sections 302 and 201 of the Indian Penal Code. The Supreme Court in that case had set aside the order of the High Court. In this case, learned Special Judge has recorded elaborate reasons,

while granting bail to the opposite parties.

21. I, therefore, find no application of the decisions of the Supreme Court cited and referred to above by learned Counsel for the Petitioner in support of the Petitioner's prayer.

22. In the case of [Bharat Chaudhary and Another Vs. State of Bihar and Another](#), , the Supreme Court has held that there is no restriction in regard to exercise of power u/s 438 Code of Criminal Procedure, in a suitable case even when the cognizance is taken or a charge sheet is filed. Learned Special Judge in his order has considered the said aspect and other aspect and has recorded reasons in support of the order, granting bail to the opposite parties. Though, I find that the order is more lengthy than required and some elaborations are disproportionate and certain observations could have been avoided, he has made it clear that those observations are tentative purely for the purpose of the said order and should not be construed as an expression of a final opinion on any of the issue on fact or law, which may rise for consideration during the course of trial.

23. Moreover, bail cannot be cancelled or order granting bail cannot be set aside only on the ground that the order is in more detail than required. I find no Illegality or infirmity in the order calling for interference with the same or cancellation of bail granted to the opposite party by learned Special Judge, C.B.I. Dhanbad.

24. This petition is, accordingly, dismissed.