

Dr. Fakir Chand Hembram @ Phakir Chand Hembram Vs State of Jharkhand

Court: Jharkhand High Court

Date of Decision: Sept. 10, 2008

Acts Referred: Criminal Procedure Code, 1973 (CrPC) â€” Section 438, 439

Penal Code, 1860 (IPC) â€” Section 120B, 409, 420

Prevention of Corruption Act, 1988 â€” Section 13

Citation: (2008) 4 JCR 245

Hon'ble Judges: D.G.R. Patnaik, J

Bench: Single Bench

Judgement

@JUDGMENTTAG-ORDER

D.G.R. Patnaik, J.

Petitioner has renewed his prayer for anticipatory bail, which was earlier disposed by this Court vide order dated

6.6.2008 passed in ABA No. 1022 of 2008 with a direction to surrender himself before the Court below and to seek regular bail.

2. Heard learned Counsel for the petitioner and the learned Counsel for the Vigilance.

3. The case was registered against the petitioner for the offences under Sections 409, 420 and 120-B of the Indian Penal Code read with Section

13(2)(1)(D) of the Prevention of Corruption Act.

4. The case registered on the basis of a complaint filed by the Dy. S.P. (Vigilance), Ranchi on 14.10.2004 relates to the purchase of medicines by

the petitioner in between January 2002-October 2002 during his tenure as Assistant Chief Medical Officer.

The allegation against the petitioner is that he had obtained supply of medicines from a sick company namely, M/s. South Eastern Surgical

Company, Ranchi at rates much higher than what was approved by the Government. The FIR mentions the details of the medicines, the rates at

which the purchase was made and the amount of loss caused to the State Exchequer by the purchase made at rates higher than approved.

5. Shri P.P.N. Rai, learned Counsel for the petitioner, seeks to explain the allegations by stating that at the relevant time of purchase, the required

medicines of the power approved by the State Government were not available in the market and hence, considering the urgent need, medicines of

higher power at higher rate had to be purchased. Learned Counsel explains further that mere fact that the supplier's shop was found closed on the

date when the investigating officer had gone to verify, in itself, does not indicate that the supplier was not in existence at all. The shop of the

supplier was closed pursuant to a direction of the Ranchi Regional Development Authority (RRDA). It is further submitted that though, the

petitioner is innocent, yet without prejudice to his right of defence, he is prepared to deposit the entire amount of Rs. 1,73,130/-.

Referring to the orders passed by this Court in a similar case for anticipatory bail in the case of Vijay Adukia v. State of Jharkhand through CBI,

vide ABA No. 2059 of 2007, learned Counsel submits that even though, allegation in the aforesaid case was of alleged misappropriation of sum of

Rs. 13 lakhs, but prayer for anticipatory bail was allowed with the condition that the petitioner should deposit 25% of the amount and thereafter

surrender before the Court below and file his bail bond. Learned Counsel adds further that the second anticipatory bail application is maintainable

even if the earlier application is dismissed on merits and refers in this context to a judgment of this Court in the case of Jai Prakash Prasad and Ors.

v. State of Jharkhand, passed in A.B.A. No. 1147 of 2004 and Anr. judgment passed by a Division Bench of the Madhya Pradesh High Court in

the case of Imratlal Vishwakarma and Ors. v. State of M.P. reported in 1997 (1) Crimes 289 and the Pull Bench Judgment of the Rajasthan High

Court in the case of Ganesh Raj Vs. State of Rajasthan and Others, and the judgment of the Supreme Court in the case of Parvinder Singh v. State

of Punjab, reported in (2003) 12 SCC 615.

6. Shri A.K. Kashyap, learned Counsel for the Vigilance, opposes the prayer for anticipatory bail primarily on the question of maintainability of the

present anticipatory ball application, on the ground that the earlier prayer for anticipatory ball having been rejected on merits, the second

application is not maintainable. Learned Counsel in this context, refers to and relies upon a Single Bench Judgment of this Court passed in the case

of Sanjay Kumar Shrivastava v. State of Jharkhand, reported in 2005 (1) ECC 57 (Jhr) and on a Full Bench Judgment of the Calcutta High Court

passed in the case of Maya Rani Guin and etc. Vs. State of West Bengal, .

Learned Counsel submits further that in absence of any fresh ground for reconsideration, this application for anticipatory ball is liable to be

rejected.

Elaborating on the allegations against the petitioner, learned Counsel submits that the petitioner in conspiracy with the other co-accused persons

had intentionally placed orders for supply of medicines at a much higher rate than what was approved by the State Government and full payment

was released even though medicines were in short supply. Investigation had revealed that the supply order to the supplier and receipt of the

vouchers in token of the supply was made almost simultaneously and it was also revealed that the petitioner had even pursued at the Treasury level

for expeditious release of payments to the supplier.

7. On hearing the parties, the primary question, which falls for consideration, is, whether the present application, which has been filed by way of

second application, can be held as maintainable in view of the fact that earlier, prayer for anticipatory bail was rejected by this Court on merits.

8. In the case of Parvinder Singh (supra) and Kalyan Chandra Sarkar etc. Vs. Rajesh Ranjan @ Pappu Yadav and Another, the Supreme Court

while dealing with this question has held that a person whose application for enlargement on bail is once rejected, is not precluded from filing

subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing, requires that such

persons to be released on bail, in spite of his earlier applications being rejected, the Courts can do so. Relying upon the Judgment of the Supreme

Court in the aforesaid two cases, a Division Bench of the Madhya Pradesh High Court in the case of Imratlal Vishwakarma and Ors. (supra), has

held that the principles as laid down in Parwinder Singh's case (supra) applies and a second application for anticipatory bail is maintainable even

though earlier application was rejected. Same view was taken by the Full Bench of the Rajasthan High Court in the case of Ganesh Raj, (supra).

The ratio in all these cases is that second application for anticipatory bail even though earlier rejected on merits, is maintainable if there is a change

in the fact situation or in law, which requires the earlier view being interfered with. The principles of Res-judicata and such analogous principles is

not applicable In criminal proceedings. Facts in the case of Maya Rani Guin, (supra) were in different context in as much as, applicant therein was

granted anticipatory bail for a limited period and thereafter, when her prayer for anticipatory bail was rejected by the lower Court, the applicant

filed her application for bail before the High Court u/s 439, CrPC. The matter came up before the Division Bench of the Court and on a difference

of opinion between the Judges on the issue as to whether the application u/s 439, CrPC could be filed even when the accused not being in custody

and whether an alternative prayer of the applicant therein for anticipatory bail should be considered, the matter was referred to the full bench. It

was in this context that the full bench had observed that the grant of anticipatory bail for a fixed duration as a condition, and subsequent prayer for

bail having been refused, the further remedy available to the aggrieved accused is for moving the higher forum for regular bail. It was also observed

that the second application for anticipatory bail even under subsequent development after rejection or disposal of the earlier application is not

maintainable. In the judgment delivered by the Single Bench of this Court in the case of Sanjay Kumar Shrivastava (supra) also, the same principle

of law was reiterated.

9. Applying the above principles, it has to be seen as to whether in the instant case, the second application for anticipatory bail can be

maintainable.

10. The earlier anticipatory bail application of the petitioner was heard and disposed of by this Court directing the petitioner to surrender himself

before the Court below and pray for regular bail with the following observations:

From perusal of the impugned order and also the FIR, it appears that the petitioner was the CMO of the district and the main allegation against him

is that he had purchased medicines by dubious method.

11. Learned Counsel for the petitioner explains that though prayer was considered on merits but considering the arguments placed by the counsel

for the State Vigilance, an impression was sought to be created that heavy amounts of money was released towards the purchase of medicines to

the supplier, although no supply of medicine was made at all, whereas the fact, as would appear from the prosecution's case in the FIR, is that the

medicines were actually supplied and delivery was obtained and entered into the stock register and later on distributed to the several dispensaries

and the only allegation is that the petitioner had purchased medicines at a higher rate than what was approved by the State Government. Learned

Counsel explains that the renewed prayer has been made on the fresh ground that all the other co-accused persons including the supplier of the

medicines, have been granted anticipatory bail by this Court. and the petitioner does not deserve to be discriminated Furthermore, the petitioner is

prepared to deposit the entire amount of alleged loss caused to the State Exchequer and the petitioner is entitled to the relief as given in similar

cases by this Court in the case of Vijay Adukia (Supra) and also in the case of Jai Prakash Prasad, (supra) and also in the case of Jamni Kant

(ABA No. 1183/04)

12. From perusal of the FIR and the case diary, the allegation which appears against the petitioner is that he had purchased medicines at a higher

rate than what was approved by the State Government, thereby causing substantial loss to the State Exchequer. The case diary does not confirm

that medicines were not supplied at all or that there was short supply of medicines and yet the amount was released. The petitioner has renewed his

prayer for anticipatory on the ground of equity since on identical allegations, the prayer for anticipatory bail was allowed to the co-accused persons

in this case and also to accused persons in other cases for similar offences for which petitioner is accused, on the condition that the amount of loss

be deposited by them and since the petitioner is also prepared to deposit the alleged amount of loss, he should be given equal treatment.

13. On considering the above facts and circumstances and the fact that all the other co-accused persons including the supplier have been granted

bail and the fact that on identical allegations, persons accused for the offences under the Prevention of Corruption Act, have been granted

anticipatory bail by this Court in several other cases, do raise a fresh ground of equity.

On the above consideration, the petitioner is directed to deposit the entire amount of Rs. 1,73,130/- in the State Treasury under appropriate Head

and surrender himself before the Court below within a week from the date of this order and on his furnishing bail bond of Rs. 20,000/- (Rupees

twenty thousand) with two sureties of the like amount each, to the satisfaction of Special Judge, Vigilance, Ranchi in connection with Vigilance P.S.

Case No. 22 of 2004 corresponding to Special (Vigilance) Case No. 26 of 2004 along with his written undertaking in terms of provisions of

Section 438(2) of the Code of Criminal Procedure, he shall be released on bail.