

(2011) 07 CAL CK 0010

Calcutta High Court

Case No: CRM No. 008 of 2011

Abdul Salam

APPELLANT

Vs

State

RESPONDENT

Date of Decision: July 7, 2011**Acts Referred:**

- Andaman and Nicobar Islands (Protection of Aboriginal Tribes) Act - Section 7
- Andaman and Nicobar Islands (Protection of Aboriginal Tribes) Regulations, 1956 - Section 8(2)
- Criminal Procedure Code, 1973 (CrPC) - Section 161, 164, 197, 439
- Penal Code, 1860 (IPC) - Section 120B, 201, 34, 406, 409
- Prevention of Corruption Act, 1988 - Section 13(1), 13(2), 19

Citation: (2011) 5 CHN 398**Hon'ble Judges:** Raghunath Ray, J; Maharaj Sinha, J**Bench:** Division Bench**Advocate:** Jayanta Banerjee, R. Majumdar, Rajinder Singh, Ajay Kumar Mondal, for the Appellant; Deep Chaim Kabir, Santosh Kumar Mandal, M.A. Rehman, for the Respondent

Judgement

Raghunath Ray, J.

This bail application u/s 439 of the Code of Criminal Procedure has been filed by Abdul Salam, Ex-Inspector of Police (since dismissed from service). The petitioner has been chargesheeted under sections 409/411/201/120B/34 IPC read with section 13(2)/13(1) (c) (d) of the Prevention of Corruption Act 1988 and sections 7/8(2) of Protection of Aboriginal Tribes (Amendment) Regulation, 1956. A written complaint was lodged by Mr. Shashi Kumar, Nodal Officer, (CBSE), Directorate of Education (camped at Car Nicobar) against Shri Krishnama Raju, Principal, GSSS, Lapathy/Reg. It was alleged therein that the sealed packets containing the question papers of AISSE 2011 for the subjects Chemistry, Biology, Mathematics and English Core were found to have been tampered. On query by the police officer the principal confessed

that the seal packets were cut open and were later resealed by him. On the basis of the said FIR Car Nicobar PS Case No. 13/2011 dated 3.3.2011 u/s 406/420/ 468/470 IPC was registered against Shri Krishnama Raju, GSSS Lapathy, Car Nicobar for investigation. A special team was constituted to investigate the said case.

2. During investigation, pursuant to supplementary statement of FIR named accused Shri Krishnama Raju, the Principal (under suspension), Abdul Rasheed Junior Engineer, APWD (under suspension) and M.J. Vijayan, Forest Ranger (under suspension) were arrested. In course of further, investigation, the name of the present petitioner Abdul Salam transpired as a co-conspirator along with co-accused M.J. Vijyan and M.P. Arun, the then Radio Operator, A&N Islands (since dismissed from service). It came to light that their wards were appearing at CBSE (Science) Examination in the year 2011. On completion of investigation, chargesheet No. 20/2011 dated 30.5.2011 was submitted against the afore-named five accused before the learned Chief Judicial Magistrate, Car Nicobar (camped at Port Blair).

3. After obtaining sanction from the Lieutenant Governor, Andaman and Nicobar Islands vide order Nos. 3954 and 3955 dated 13.6.2011 u/s 197 Cr. PC and u/s 19 of Prevention of Corruption Act, 1988 to prosecute the chargesheeted accused in connection with Car Nicobar PS Case No. 13/2011, a supplementary chargesheet No. 20(A)/2011 dated 14.6.2011 was filed before the learned Chief Judicial Magistrate, Car Nicobar (camped at Port Blair).

4. In support of the bail application it is submitted by Mr. Banerjee, learned Counsel for the petitioner that, even though the petitioner has been chargesheeted, the prosecution has failed to establish the case of conspiracy for causing leakage of CBSE question papers prima facie against the petitioner. According to him, it can be said at the most that he was one of the beneficiaries because of alleged leakage of CBSE question papers which were in the custody of the FIR-named accused who played a pivotal role in causing such leakage of question papers. It is further pointed out by him that the applicant was arrested on the basis of a confessional statement made by co-accused Abdul Rasheed. The Investigating Agency has, in fact, failed to collect any evidence worth the name against the present petitioner. According to him, none of the witnesses examined either under 161 Cr. PC or u/s 164 Cr. PC has substantiated the allegation of conspiracy in causing leakage of question papers against him. That apart, because of his dismissal from service he has been suffering serious hardship along with his family members. Since all incriminating materials, if any have already been seized by the police and investigation is already over, his detention for the sake of investigation is no longer required. More so, whenever he is in custody for more than 120 days. It is also submitted by Mr. Banerjee that the petitioner had already undergone open head surgery in the year 2002 for multiple fracture of forehead and, thereafter, the specialist doctors have observed recurrence of vertigo problem. Even while in jail he was admitted to Jail Hospital and subsequently referred to GB Pant Hospital. Despite such serious ailment, if he is

kept in custody, his health condition would deteriorate in the absence of proper medical treatment. Therefore, the petitioner's prayer for bail should be considered favourably.

5. Such submission is, however, strongly disputed by Mr. Kabir the learned special PP engaged in this case. It is argued by him that immediately after the arrest of the petitioner, his personal desktop computer was seized. On preliminary examination of his hard disk at the cyber crime cell of the A&N Police, it was detected that certain external devices were inserted into the system which had files titled as "Sample Paper Physics provided by Rasheed", "Sample Paper - Maths", "Sample Paper-2" among others. The seized hard disk was sent to CFSL, Hyderabad and the report submitted by CFSL confirms the preliminary analysis of the Cyber Crime Cell of A&N police. He has also referred to the extracts of a good number of GD entries wherefrom it would appear that the petitioner threatened the witnesses, According to him, the Circuit Bench has already directed the learned Special Judge to dispose of the G.R. case No. 04/ 2011 pending before him within three months. The learned Special Judge has, therefore, framed charge and fixed day- today schedule for examination and cross-examination of 61 witnesses cited in the chargesheet. Such recording of evidence is scheduled to commence on and from 11.07.2011. In this context it is further submitted by him that the prosecution in its anxiety to conclude the trial with utmost expedition mentioned the matter before the Division Bench presided over by the Hon"ble Chief Justice since the learned Special Judge suffered cardiac problem. The prosecution is keen on holding custodial trial of the accused and modification of earlier order passed by the Circuit Bench was sought for accordingly. However, the matter has now been left to the discretion of the Circuit Bench at Port Blair. According to him, enlargement of this accused petitioner on bail would seriously jeopardize the interest of speedy trial.

6. We have very carefully taken into consideration the rival submissions advanced by both sides with reference to the relevant materials on record so far collected by the 10 in course of investigation. Admittedly, chargesheet and supplementary chargesheet have already been filed. Therefore, the custodial interrogation of the accused to facilitate proper investigation is no longer required. The Circuit Bench vide order dated 13.6.2011, however, rejected the bail prayer of the principal accused P. Krishnama Raju and directed the learned Special Judge to conclude the trial within three months from the date of receipt of the record from the learned Chief Judicial Magistrate, Car Nicobar (Camped at Port Blair). It is also not in dispute that on receipt of relevant case record the charge has been framed against the accused by the learned Special Judge. Examination and cross-examination of witnesses is scheduled to commence on and from 11.7.2011, It, however, appears that because of cardiac problem, the learned Special Judge is not available in the station for the present. In such a situation, it cannot be said for the time being as to whether the schedule fixed for recording of evidence would be maintained or disturbed. The question of extending time schedule would arise only on 11.7.2011, if

the trial could not be proceeded with.

7. It appears that the accused petitioner was summarily dismissed from service. Despite such dismissal, it is apprehended by the prosecution that the witnesses are likely to be threatened or induced in the event of his enlargement on bail. We are, however, certainly not impressed with the above apprehension of the investigating agency at all. It is impossible to conceive that the petitioner can possibly cause threat or is likely to induce the witnesses concerned after being summarily dismissed from the police service. At any rate, this Court is now to take into consideration the feasibility of holding trial till its logical conclusion as expeditiously as possible within the stipulated time frame.

8. Against such backdrop we are to consider whether the petitioner's release on bail would impede, in any way, the smooth progress of trial by way of tampering of evidence during trial as alleged. There is no doubt that at times custodial trial becomes imperative to safeguard the interest of expeditious trial. Similarly, trial is also likely to be impeded if there is any chance of abscondence of accused during trial. These are some of the pertinent circumstances which are required to be taken care of prior to the grant of bail especially when the trial has already commenced for all practical purposes and the learned Trial Judge is to carry out arduous task of holding trial on day-to-day basis till its conclusion within a specified time schedule.

9. Keeping in view that aspect of the matter in particular, we have very meticulously scrutinized the relevant CD in the light of rival submissions made on behalf of the contesting parties. It reveals that there are incriminating materials indicating prima facie, involvement of accused petitioner in commission of offences as alleged against him. Further, the recording of evidence is likely to commence on and from 11.07.2011 on day-to-day basis and trial is to be concluded within three months. In that view of the matter, it would not be safe and prudent to release the accused petitioner on the eve of commencement of recording of evidence. We, therefore, feel inclined to reject the petitioner's prayer for bail to safeguard the interest of speedy trial. Accordingly, the prayer for bail stands rejected at this stage.

10. However, having regard to the peculiar nature of facts and circumstances of the case analyzed above, it is made clear that the rejection of the petitioner's bail petition would not preclude him from renewing his bail prayer before the learned Trial Court in future. In the event of a renewal of such bail prayer, the learned Trial Judge would be at liberty to consider on its merits and dispose of the same in accordance with law without being influenced by this order refusing the prayer for bail. It is further clarified that observations made hereinbefore by us for the limited purpose of disposal of this bail application are absolutely tentative in nature and the learned Court below need not take the same into consideration. He would exercise the judicious discretion independently and feel free to take his own decision. As a matter of fact, we have not entered into the merits of the case pending before the learned Trial Court at this stage of bail hearing.

11. Criminal Misc. Case No. 008 of 2011 thus stands disposed of with the observations as above.

12. Let a copy of this order be communicated to the learned Special Judge forthwith for information and necessary compliance. Let the xerox plain copy of this order duly countersigned by the Assistant Registrar (Court) or the Assistant Court Officer be supplied to the learned Counsel for the respective parties upon usual undertakings as prayed for.

M. Sinha, J.

I agree.