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(2011) 6 AD 32 : (2011) 3 JCC 1866

Delhi High Court

Case No: Bail Application No. 682 of 2011

Dr. Lalit K. Bhanot APPELLANT

Vs

CBI RESPONDENT

Date of Decision: July 5, 2011

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) â€" Section 167, 167(2)#Penal Code, 1860 (IPC) â€" Section 120B, 420, 439, 467, 468#Prevention of Corruption Act, 1988 â€" Section 13(1), 13(2)

Citation: (2011) 6 AD 32 : (2011) 3 JCC 1866

Hon'ble Judges: Mukta Gupta, J

Bench: Single Bench

Advocate: Ramesh Gupta, Hrishikesh Baruah, Arjun Dewan and Sumit Arora, for the Appellant; Gautam Narayan and Dayan Krishnan, for the Respondent

Final Decision: Dismissed

Judgement

Mukta Gupta, J.
By this petition the Petitioner seeks bail in R.C. No. DAI-2010-8-0044 u/s 420/467/468/471 read with Section 120-B

IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act 1988 (in short P.C. Act) registered by the CBI.

2. The primary contention of the Petitioner in the present case is that the Petitioner was arrested in the above mentioned FIR for offences u/s 420

read with 120-B IPC and Section 13(2) read with 13(1)(d) of the P.C. Act. Thus, the time frame within which the Respondent was mandated to

file the charge sheet was 60 days and no remand of the Petitioner to judicial custody could have been granted beyond the period of 60 days. It is

contended that the Petitioner had applied for bail on the ground of non-filing of the charge-sheet within 60 days on 29th April, 2011 i.e. before the

filing of the charge-sheet and he is, thus, entitled to the statutory bail u/s 167(2) Code of Criminal Procedure Relying on State of Maharashtra Vs.

Bharati Chandmal Varma @ Ayesha Khan, it is contended that by adding Section 467 IPC to the case, the period of custody can not be extended

from 60 days to 90 days, as the time period for filing the charge-sheet would be the one which is applicable to the facts and penal provisions

invoked at the time when the person is initially arrested. It is further contended that even as per the allegations set out no offence u/s 467 IPC is

made out and, thus, the Petitioner is entitled to the statutory bail. Reliance in this regard is placed on Md. Ibrahim and Others Vs. State of Bihar

and Another, A.M. Chakrabortty Vs. Ved Vrat and Others, ; Daniel Hailey Walcott and Another Vs. State, . Reliance is also placed on Devendra

and Others Vs. State of U.P. and Another, to contend that making of a false document is a sine-qua-non of the offence of forgery. In the present

case no forged document has been prepared by the Petitioner and, thus, no case u/s 467 IPC is made out.

3. Learned Counsel on behalf of the CBI contends that FIR is not an encyclopedia of the entire prosecution case as laid down in Superintendent of

Police, C.B.I. and Others Vs. Tapan Kr. Singh, . He further states that the Hon"ble Supreme Court in Mustaq Ahmed Mohammed Isak and

Others Vs. State of Maharashtra, held that once offences are added to the case which entail an extended period of remand pending investigation,

the prosecution would be entitled to the same. Admittedly, the charge sheet was filed within 90 days of the remand period. In the present case

Section 467 IPC was added at the time of second remand when the learned Senior PP for CBI brought to the notice of the learned trial court that

during investigation three more Sections i.e. 467, 468 and 471 IPC have been added. The learned Court directed that Sections be mentioned in

the remand papers of the accused persons and the case diary be returned. Thus the investigating agency was entitled to file the charge sheet within

the period of 90 days from the first remand. According to the learned Counsel the ingredients of Section 467 IPC are clearly made out. However,

this is an issue which will be considered by the learned trial court at the time of framing of charge. This Court while deciding a bail application u/s

439 IPC read with Section 167(2) Code of Criminal Procedure will not pre-judge whether Section of 467 IPC is attracted to the facts of the case.

He, however, states that Section 467 IPC does not contemplate forgery of a valuable security only. Even where a person purports to give

authority to any person to receive or deliver any money or movable or immovable property, the same amounts to forgery. The charge-sheet clearly

shows that the Petitioner in connivance with other officials deliberately bye-passed the Technical F.A. Although the note was marked to ADG

(Technical) for putting on the website, the note was never routed through ADG (Technical) but was instead routed by the P.A. of the Petitioner to

a junior functionary in Technology F.A. for publication on Organizing Committee Website on 23rd March, 2009. Thereafter, the co-accused Surjit

Lal ante-dated this note by writing series of false notings with a view to seek financial approvals by placing an advertisement of EOI in the

newspaper for which Communications F.A. was the competent person.

4. I have heard learned Counsel for the parties. Learned Counsel for the Petitioner has based his case entirely on the decision rendered by the

Hon"ble Supreme Court in State of Maharashtra (supra). He contends that if the provisions invoked at the time of arrest of an accused permit a

period of remand of 60 days pending investigation, the State would be bound to file the charge sheet in 60 days failing which the accused will be

entitled to statutory bail u/s 167(2) Code of Criminal Procedure By invoking serious Sections during the investigation the State does not get the

benefit of extended period of 90 days for filing the charge sheet.

5. The Hon"ble Supreme Court in State of Maharashtra Vs. Bharati Chandmal Varma @ Ayesha Khan, held:

7. It is admitted by the learned Sr. Counsel for the State of Maharashtra that the Public Prosecutor has not filed any report before the Special

Court showing reasons for the detention of the Respondent beyond 90 days from the date of the first remand order. Hence they are disabled from

contending that the proviso to Section 21(2) of the MCOCA would enable the investigating agency to have the pre-trial custody of the

Respondent extended beyond 90 days. In order to circumvent, the said hurdle learned Counsel adopted a twofold contention. First is that the

period of 90 days can be reckoned from 21st April, 2001 (the date when the investigation was allowed to be conducted for the offence under the

MCOCA). Second is that the provisions regarding bail under the said Act is very stringent as quoted above and the High Court did not consider it

from the said angle.

6. The reliance on the said decision and the reading thereof by the Petitioner is wholly fallacious. In State of Maharashtra(supra) the benefit of

extended period of 180 days permitted under the MCOCA was not given for the reason that no report was filed before the Special Court showing

the reasons for the detention of the Respondent therein beyond 90 days from the date of first remand order. In this regard, it would be relevant to

note the Section 21 of the MCOCA Act:

Section 21(1)...

2. Section 167 of the Code shall apply in relation to a case involving an offence punishable under this Act subject to the modifications that, in Sub-

section (2) -

(a) the references to ""fifteen days"" and ""sixty days"", wherever they occur, shall be construed as references to ""thirty days"" and ""ninety days"",

respectively,

(b) after the proviso, the following proviso shall be inserted, namely:

Provided that if it is not possible to complete the investigation within the said period of ninety days, the Special Court shall extend the said period

up to one hundred and eighty days, on the report of the Public Prosecutor indicating the progress of the investigation and the specific reasons for

the detention of the accused beyond the said period of ninety days

7. Thus, a perusal of Section 21(2) shows that to seek the benefit of the extended time period, the Special Public Prosecutor had to state reasons

before the Special Court who would extend the period of ninety days to one hundred and eighty days after considering the report indicating the

progress of the investigation and the specific reasons for the detention beyond the said period of ninety days. Thereafter, in order to overcome this

hurdle, the learned Public Prosecutor in the said case took the plea that the period of 90 days would be available from the day MCOCA was

invoked, which plea was turned down. In the present case, the facts are totally different. By invoking Section 467 IPC to the facts of the case and

seeking extended period of remand from 60 to 90 days, the Public Prosecutor was not required to file a report indicating the progress of the

investigation and specific reasons for the detention of the accused beyond the said period of ninety days. The applications for remand as

contemplated under the Code of Criminal Procedure were only required to be filed. This fact was duly brought to the notice of the Court at the

time of the remand.

8. As regards the contention that Section 467 IPC is not attracted to the facts of the present case, I would like to note that at this stage, it is too

early for this Court to return a finding as that would be an issue which the learned trial Court will decide at the time of hearing arguments on charge.

However, since it was insisted on by the learned Counsel for the Petitioner that Section 467 IPC is not made out on the facts of the case, and the

prosecution was not entitled to the extended period of 90 days for remand of the Petitioner this Court is prima facie of the opinion that there is no

merit in the contention. At this stage it would be relevant to re-produce Section 467 IPC:

467. Forgery of valuable security, will, etc.- Whoever forges a document which purports to be a valuable security or a will, or an authority to

adopt a son, or which purports to give authority to any person to make or transfer any valuable security, or to receive the principal, interest or

dividends thereon, or to receive or deliver any money, movable property, or valuable security, or any document purporting to be an acquittance or

receipt acknowledging the payment of money, or an acquittance or receipt for the delivery of any movable property or valuable security, shall be

punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to

fine.

9. A perusal of Section 467 shows that it is attracted even if the document purports to give an authority to any person to transfer a valuable

security for delivery of any moveable or immovable property. In the decision referred to by the learned Counsel for the Petitioner in Md. Ibrahim

and Others Vs. State of Bihar and Another, it was held:

14. xxx

(1) xxx

(2) The second is where a person dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part, without lawful

authority, after it has been made or executed by either himself or any other person.

10. This being the legal position since the allegations of the prosecution are that the note was antedated by writing series of false notings with a

view to seek financial approvals, the offence punishable u/s 467 IPC is prima facie made out.

11. Thus, the Petitioner is not entitled to the grant of bail in view of the alleged breach of Section 167(2) of the Code of Criminal Procedure i.e. the

charge sheet not having been filed within a statutory period of 60 days. I find no merit in the present petition. The same is dismissed.