

(1993) 01 DEL CK 0055

Delhi High Court

Case No: Criminal Miscellaneous (Main) Appeal No. 4 of 1993

Binoy Jacob

APPELLANT

Vs

Central Bureau of Investigation

RESPONDENT

Date of Decision: Jan. 28, 1993

Citation: (1993) CriLJ 1293 : (1993) 49 DLT 640 : (1993) 3 RCR(Criminal) 11 : (1993) 2 RCR(Criminal) 227 : (1993) RLR 263

Hon'ble Judges: Y.K. Sabharwal, J

Bench: Single Bench

Advocate: Rajinder Singh, D.C. Mathur, J.K. Dass and S. Lal, for the Appellant;

Judgement

Y.K. Sabharwal, J.

(1) Binoy Jacob, the petitioner, who seeks an order from this Court for being released on bail is one of the accused in First Information Report bearing No. Rca (A) 92-ACU Vi dated 28/11/1992. The other named accused in the F.I.R. are V. Krishnamurthy and his two sons K. Chandra Sandy and K. Jayakar. The case of the prosecution in brief, is as under :

(2) In the year 1982 V. Krishnamurthy while functioning as Vice-Chairman and Managing Director for Maruti Udyog Limited (MUL) joined hands with Binoy Jacob, Director of M/s. Apten Marketing and Management Services (P) Ltd. and K. Jayakar in order to earn ill-gotten money in the form of commission from various multi-nationals in connection with the transactions held by these multi-nationals with the companies under the control and influence of V. Krishnamurthy in his capacity as a public servant. In pursuance of the said object Binoy Jacob and K. Jayakar Along with Prem Kumar set up a company on 6/07/1982 with the following shares :

1. Binoy Jacob 501 shares 2. K. Jayakar 401 shares 3. S. Prem Kumar 001 shares

(3) V. Krishnamurthy while functioning as public servant participated in the management of M/s. Apten Marketing and Management Service (P)Ltd. through his son Jayakar. V. Krishnamurthy became Chairman of M.U.L. on 21st March 1983 and continued to be its Chairman till 17/03/1985. Between 17/05/1985 and 1/04/1990 V. Krishnamurthy was part-time Chairman of M.U.L. and full time Chairman of Steel Authority of India (SAIL). M/s. Sumitomo Corporation incorporated in Japan while having official business with M/s. Apten paid commission of about Rs. 6 lakhs to M/s. Apten Marketing and Management Services (P) Ltd. Huge commissions were also paid to M/s. Apten by various other multi-nationals with whom V. Krishnamurthy had official dealings as public servant. M/s. Apten Marketing and Management Services (P) Ltd. succeeded in obtaining commission through representation agreements with multi-national companies for their work in India on account of official position of V. Krishnamurthy as public servant . /p>

(4) Further the case of the prosecution is that when it became apparent that M/s. Apten Marketing and Management Services (P) Ltd. could receive huge commission as a result of influence exercised by V. Krishnamurthy, the eldest son of V. Krishnamurthy, namely, K. Chandra Sandy bought a shell company viz. Link Universe Company Limited on 9/09/1985 in Hongkong. It is learnt that V. Krishnamurthy has considerable involvement in the business of his son K. Chandra Sandy and Binoy Jacob. Since Binoy Jacob did not succeed in getting resident's permit in Hongkong despite his efforts, one David Barrett was made his assignee for M/s. Link Universe Company Limited, Hongkong, a 50 : 50 owned company between Binoy Jacob and K. Chandra. M/s. Link Universe Company collected over 10 millions US dollars from 1985 to 1990 and most of the money received by M/s. Link Universe Company by way of commission, which M/s. Apten would have otherwise received in India, was deposited in Union Bank of Switzerland Account No. 709475, which had in balance US dollars 56,76,517.24 as on 27/05/1988. This company has two other numbered accounts also in the Switzerland viz. 675-701 and 706-350. Some portion of the money collected by way of commission was utilised in securing further business through other public servants by corrupt and illegal means. On 27/10/1988 M/s. Link Universe Company received Yen 126 millions as "V.K. Profit" and on the next day US dollars 0.4 millions was transferred to M/s. International Engineering account and 0.1 millions US dollars to M/s. Ergodyne's accounts, the two companies in which the two sons of V. Krishnamurthy were having shareholding interests. Thus, V. Krishnamurthy has, by corrupt or illegal means or by otherwise abusing his official position as a public servant, in conspiracy with Binoy Jacob, K. Chandra and Jayakar and others obtained huge pecuniary advantages for themselves and for others and these facts and circumstances constitute offences punishable u/s 120B, Indian Penal Code and Sections 5(2) read with Section 5(1)(d) of the Prevention of Corruption Act, 1947 as well as Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988.

(5) Binoy Jacob was arrested on 2/12/1992. On 24/12/1992 the learned Special Judge while dismissing bail application of the petitioner stated in the order that it does seem somewhat unusual that though the main allegation is against V. Krishnamurthy and his two sons Binoy Jacob has been arrested but observed that the Court had no jurisdiction to direct the arrest of a particular person at a particular time. The present bail application was filed on 2/01/1993 and after four learned Judges of this Court declined to hear the matter, it has been fixed for hearing before me. I have heard learned Counsel for the parties and have gone through the relevant record.

(6) In support of the bail application Mr. Rajinder Singh, learned Counsel appearing for the petitioner, vehemently contends. that out of the companies mentioned in the F.I.R. the involvement of the petitioner is alleged to be in relation to only two companies, namely, M/s. Apten and M/s.Link Universe. Counsel submits that as per F.I.R. the petitioner has nothing to do with other companies mentioned in the F.I.R., namely, M/s. International Engineering and M/s. Ergodyne's with which the two sons of V.Krishnamurthy are alleged to be linked with. It is also urged that the petitioner has no nexus with M/s. Link Universe. Counsel contends that according to F.I.R. the main allegations are against Krishnamurthy and his two sons and the sole allegation against the petitioner is u/s 120B, IPC of conspiracy in the acts concerning Krishnamurthy and the basic offence and the substantive offences being under Prevention of Corruption Act, the petitioner cannot be charged with the same as he is not and was not a public servant. Mr. Singh further submits that the main allegations of the prosecution are against Krishnamurthy and his two sons but they have not been arrested for the reasons best known to the Investigation Agency and that the petitioner has been meted out with discriminatory treatment. It is further pointed out by learned Counsel that it is not a case of the prosecution that there has been any transaction between the company of which the petitioner is alleged to be the Director and M/s. Maruti Udyog Limited or S.A.I.L., yet the petitioner has been arrested for having received illegal commissions on counts of misuse of official position of Krishnamurthy. Mr. Singh contends that the petitioner has deep roots in the society, his family is at Delhi, he is an Income Tax assessed and has Immovable property at Delhi, and that he is not a previous convict and not a fugitive from justice and, Therefore, there is no likelihood of the petitioner fleeing from justice and not joining the investigation in the event of his being granted bail.

(7) Opposing the prayer for grant of bail, Mr. Lal, learned Counsel for the C.B.I., contends, that in conspiracy with the petitioner huge pecuniary advantages have been received and huge amount of commissions have been deposited in the foreign banks as detailed in the F.I.R. and the offence of which the petitioner is accused is grave and the petitioner is likely to tamper with evidence. Refuting the contentions put forth on behalf of the petitioner Mr. Lal submits that it is not a fit case for grant of bail. Learned Counsel further contends that it is the discretion of the investigating agency as to which accused is to be arrested and at what stage and the petitioner

may not be admitted to bail simply because other accused have not been arrested.

(8) There is no hard and fast rules regarding grant or refusal to grant bail .Each case has to be considered on its own merits.

(9) There is no doubt that the investigating agency in its discretion has to decide as to which accused is to be arrested and at what stage. The Court ,can, however, ask the Investigating Agency in appropriate cases as to what is the reason for not arresting the main accused. In case no satisfactory answer is given, the Court can take into consideration this factor, amongst others ,while considering the bail application of the co-accused. In the country governed by rule of law the discretion of the investigating agency does not mean whim, fancy or wholly arbitrary exercise of discretion. The facts disclosed in the First Information Report show that the main accused is V. Krishnamurthy who is stated to have obtained huge pecuniary advantage acting in conspiracy with his two sons and Binoy Jacob. V. Krishnamurthy and his son K. Chandra, according to prosecution, were interrogated only on 2/12/1992 and at no time thereafter. Jayakar has not been interrogated. Jayakar is stated to be abroad. The prosecution in exercise of its discretion has not arrested V. Krishnamurthy and his son K. Chandra. It is,of course up to them to arrest or not to arrest. The Explanation given by prosecution is that as V. Krishnamurthy has been enlarged on interim bail on medical grounds in another case and that is the reason for not arresting him. About K. Chandra. the C.B.T. says that as he has been enlarged on bail in another case and has been restrained from going abroad and that is why he has not been arrested in this case. It may be noticed that order for release of Chandra was passed much before the date of F.I.R. in question. It is not disputed by C.B.I, that the passport of Binoy Jacob is also with it. The question is not about -arrest or non-arrest of Krishnamurthy or his sons but,prima facie, one does get an impression that the C.B.T.. a prime investigating agency of the country, is treating Binoy Jacob differently. As noticed above as per F.I.R., in International Engineering and M/s. Ergodyne"s account two sons of V. Krishnamurthy were having shareholding interests but it does not talk of Binoy Jacob having interest in the said two companies.

(10) Binoy Jacob was arrested on 2/12/1992. Admittedly. if the chargesheet is not filed within the outer limit provided by proviso (a) to Section 167(2) of the Code of Criminal Procedure, the accused Binoy Jacob shall have to be released on bail as a matter of right. Counsel for C.B.T.very fairly stated that the C.B.T. is not likely to file chargesheet within the stipulated period of sixty days which is going to expire after about 2/3 days.

(11) Having regard to the totality of the circumstances the petitioner has made out a case for his release on bail. Accordingly. T direct that the petitioner be released on bail on his furnishing a bond in the sum of Rs. 2lakhs with one surety in the like amount to the satisfaction of the Special Court subject to the following conditions :

(1)The petitioner will not tamper with the evidence.(2) He would join the investigation as and when required.(3) The petitioner would not leave India except with the permission of the Court. (4) As and when the petitioner leaves Delhi he will inform the Investigating Officer as to the place of his visit and address there and the date of return.

(12) The bail application is allowed in above terms, petition allowed