

IN THE HIGH COURT AT CALCUTTA
Criminal Miscellaneous Jurisdiction
Appellate Side

Present :- Hon'ble Mr. Justice I. P. Mukerji
Hon'ble Mr. Justice Biswaroop Chowdhury

CRM (DB) No. 4148 of 2022

Prabha Surana
Vs.
State of West Bengal

For the Petitioner :- Mr. Ratnanko Banerjee, Sr. Adv.,
Mr. Ayan Bhattacharya,
Mr. Abhijit Chowdhury,
Mr. Aditya Ratan Tiwary, Advs.

For the defacto-complainant :- Mr. Sandipan Ganguly,
Mr. Arnab Sardar,
Mr. Anurag Sardar,
Mr. Sayan Mukherjee, Advs.

For the State :- Mr. Saswata Gopal Mukherji,
Ld. PP,
Mr. Nequive Ahamed,
Ms. Jonaki Saha.

Judgment on :- 19.05.2023

I. P. Mukerji, J.:-

INTRODUCTION

When the bail application was moved before us on 10th January, 2023, the petitioner was already in custody for 135 days. Investigation was over and charge sheet had been filed. Although, further investigation was contemplated, but any supplementary charge sheet had not been submitted. One co-accused had been granted bail. A special leave petition challenging that bail order SLP (Criminal) Diary No. 33282 of 2022 (Amita Dani and Ors. vs. Shubhika Surana and Anr.), filed by the de-facto complainant was dismissed by the Supreme Court on 31st October, 2022.

On these facts on 10th January, 2023 we granted bail to the petitioner.

The State of West Bengal was not happy with this order. In fact, they felt aggrieved. They moved the Supreme Court with a special leave petition

(Crl.) No. 1981 of 2023. Its appeal was allowed. The Supreme Court passed the following order on 3rd March, 2023, remanding the matter back to us after setting aside our order:

1. *“.....Accordingly, the impugned order passed by the High releasing the respondent on bail is hereby quashed and set aside and the matter is remitted back to the High Court to reconsider the bail application afresh, in accordance with law and on its own merits and in light of the observations made by this Court reproduced hereinabove.*

The aforesaid exercise shall be completed within a period of three months from the date of receipt of present order. All the contentions and defences, which may be available to the respective parties are kept open, to be considered by the High Court which shall be dealt with and considered by the High Court in accordance with law and on its own merits and without in any way being influenced by the present order.

In view of the above, the present Appeal is accordingly allowed.”

Human liberty is most valuable to every civilized human being. Liberty includes the right and opportunity to free movement without unreasonable restrictions, the freedom to talk, to be talked to, to write, to be written to, to express views, be influenced by expression of views, to work, eat, rest, play, recreate and do activities becoming of a civilized human being, without interference from anybody or unreasonable interference from any state authority.

This principle is as old as the hills in all countries where there is rule of law as understood by the Anglo Saxon jurisprudence, that unless required to prevent commission of a crime, normally, a person cannot be detained in prison without trial by any state authority. The principle which flows alongside this constitutional principle is that a man is presumed to be innocent unless proved guilty and that a person is proved guilty of a criminal offence only if his guilt is proved beyond reasonable doubt. Such is the standard of proof required for conviction in a criminal trial. There is a

saying that a thousand guilty persons may be acquitted by the court but let not a single innocent person be convicted.

Immediately after a cognizable offence is complained of, an investigation is started. The police starts an investigation under Sections 156 and 157 of the Code of Criminal Procedure visits the place of crime, makes an enquiry, makes search and seizure of articles involved in the crime. The police starts interrogation of persons to identify the accused or witnesses. Persons are summoned to give statements. They are recorded under Sections 161, 162 and 164 of the Criminal Procedure Code. The evidence to support the commission of the crime has to be quickly collected.

An exception to the above principle of no detention without trial is when after the occurrence of a cognizable offence, the alleged offenders need to be identified, interrogated and the offence investigated into to enable the prosecution to frame a charge against them. The offence complained of may be heinous like murder. The alleged offender may be of a very vicious nature. He may be inclined to commit more crimes. The more heinous the offence, there is more likelihood of the offender trying to conceal the evidence of the crime or interfering with the witnesses so that they do not speak against him. There might also be a tendency of offenders to flee from justice and take shelter in some safe place.

Now, when investigation is taking place, it becomes necessary in most cases to take the accused into custody so that he does not obstruct or interfere with the collection of evidence or influence potential witnesses, the investigation and the submission of charge sheet by the prosecuting authority.

When such an arrest is made, it is prior to trial. Such detention is justified in law. Concurrently, the accused has a right to apply for bail.

How is a case for grant or refusal to grant bail to be considered by the court? It is not necessary to go into the generality of the circumstances in

which bail is granted or not granted. I shall discuss the facts of this case and the authorities on the subject to come to a view whether bail should be granted to the accused, in this case.

FACTS

The facts of the case are like this. An association of fraudulent persons was formed around 2007. It consisted of one Dilip Chand Kankaria, his wife Sudha Kankaria, their relative Surendra Bengani and the members of the Surana family which included the petitioner and her husband Shanti Kumar Surana. The petitioner, a senior member of the society and belonging to a respectable business family represented to members of her society and also to the public at large that if they invested money through Kankaria and the Surana group, they would receive large returns. In this way, several crores of rupees were received from the public by Kankaria and part of it was routed to the account of the petitioner. What appears from the tenor of the accusation is that this was only part of several chains through which money was collected and routed. The ultimate purpose was to misappropriate the fund collected. A brochure by Commercial Paradise Pvt. Ltd. inviting the public to make investment was allegedly issued and published in 2011 allegedly deceiving them to make investment. According to the petitioner the company was incorporated years later in 2016. Hence the brochure could have been issued on or after 2016. According to the prosecution, the bank statements obtained by it would show that several hundreds of crores of rupees interchanged hands between the petitioner and Dilip Chand Kankaria between 2007 and 2013. After his death this operation was handled by his wife, Sudha whose bank account would also reflect these transactions from 2014 till 2020.

The de facto complainant lodged a complaint petition before the Chief Judicial Magistrate under Section 156(3) of the Code of Criminal Procedure which was treated as a First Inspection Report.

The accused has a different story to tell. The alleged transaction between the de-facto complainant and the Kankarias had nothing to do with the petitioner. On the face of the first information report, it would appear that the alleged offence was committed from 28th May, 2011 onwards. That the petitioner had no connection with it, would appear from the fact that in 2021 a commercial suit was filed by the de-facto complainant against Sudha Kankaria (CS No. 219 of 2021) for recovery of Rs.1,20,00,000/- on a loan transaction (after withdrawal of a similar earlier suit instituted on 28th June, 2019), which was subsequently settled between the parties and withdrawn.

Admittedly, Rs.52,58,964/- had been repaid by Sudha Kankaria before institution of the complaint.

The petitioner has been charged inter alia under Section 3 of the West Bengal Protection of Interest of Depositors in Financial Establishments Act, 2013 for an offence which was allegedly committed in 2011.

From the charge sheet, it is evident that the complaint was regard to money paid to Dilip Chand Kankaria between 2011 and 2012. His widow, Sudha assured repayment to the de-facto complainant on 1st January, 2014. Yet, the complaint was lodged on 27th January, 2020 before the Chief Judicial Magistrate. The investigation was completed on 21st July, 2022. The charge sheet was filed before the learned Special Judge. The petitioner has surrendered their passport with the investigating agency.

The subject matter of the complaint is a plain and simple civil dispute between the parties, the accused finally contended.

LAW

At this point of time, it is important to note the law laid down by the Supreme Court in the case of **Ishwarji Nagaji Mali vs. State of Gujarat & Anr.** in **(2022) 6 SCC 609** relying on which the Supreme Court was pleased to set aside our judgement and order dated 10th January, 2023. The

judgement in **Ishwarji Nagaji Mali** summarised the law with regard to grant of bail laid down by the Supreme Court in around 45 years beginning with **Gudikanti Narasimhulu and Ors. vs. Public Prosecutor, High Court of Andhra Pradesh** reported in **(1978) 1 SCC 240** and ending with **Anil Kumar Yadav vs. State (NCT of Delhi)** reported in **(2018) 12 SCC 129**. Over these years, the court held that the nature of the charge and evidence, the punishment which the accused would receive on conviction, whether the accused would thwart the course of justice, the likelihood of the applicant fleeing from justice, interfering with witnesses and evidence, enquiry into the antecedents of the accused, particularly his tendency to commit further crime would be the considerations in such an application. In **Prahlad Singh Bhati vs. NCT, Delhi and Anr.** reported in **(2001) 4 SCC 280** the Supreme Court said that the legislature while using the words “reasonable grounds” for believing that the accused had committed the crime meant that the prosecution had only to establish a genuine case against the accused. In **Ram Govind Upadhyay vs. Sudarshan Singh** reported in **(2002) 3 SCC 598**, the court said that the power to grant bail had to be used in a judicious manner on a case to case basis. The more heinous the crime the greater the chance of rejection of bail. In **Kalyan Chandra Sarkar vs. Rajesh Ranjan alias Pappu Yadav and Anr.** reported in **(2004) 7 SCC 528**, the court held that the court should not enquire into the nature of the facts and evidence. It should deal with the case prima facie. It should not deal with the application mechanically as held in **Prasanta Kumar Sarkar vs. Ashis Chatterjee and Anr.** reported in **(2010) 14 SCC 496**. [See also **Neeru Yadav vs. State of Uttar Pradesh and Anr.** reported in **(2016) 15 SCC 422** and **Anil Kumar Yadav vs. State (NCT of Delhi) and Anr.** reported in **(2018) 12 SCC 129**.]

In **Serious Fraud Investigation Office vs. Nittin Johari and Anr.** reported in **(2019) 9 SCC 165**, the Supreme Court treated an economic offence as a class by its own resulting from “deep-rooted conspiracy and

involving huge loss of public funds.” While granting bail the court had to consider “the nature of evidence.....severity of the punishment, the character of the accused.....his antecedents.....reasonable possibility of securing the presence of the accused at the trial..... reasonable apprehension of the witnesses being tampered with.....the larger interest of the public/State and other similar considerations.” It endorsed its earlier view in **Y.S. Jagan Mohan Reddy vs. Central Bureau of Investigation** reported in **(2013) 7 SCC 439**. [See also **State of Bihar & Anr. vs. Amit Kumar alias Bachcha Rai** reported in **(2017) 13 SCC 751**].

In the case concerning the former Finance Minister P. Chidambaram, **P. Chidambaram vs. Directorate of Enforcement** reported in **(2020) 13 SCC 791**, Mr. Justice Bopanna delivering the judgment of the Supreme Court opined that an economic offence could have sufficient gravity. The gravity of the offence had to be assessed on a case to case basis. However, the right to grant of bail should not be denied to persons accused of such offence. Bail was the rule and refusal the exception. He observed that an accused person who enjoyed freedom was in a much better position to look after his case and to properly defend himself than one in custody. The law presumed his innocence until convicted. The court followed its earlier dictum in **Shri Gurbaksh Singh Sibbia and Ors. vs. State of Punjab** reported in **(1980) 2 SCC 565**.

On the ground that the accused in a chit fund scam would interfere with the sale of properties keeping away prospective buyers, bail was refused to him in **Central Bureau of Investigation vs. Ramendu Chattopadhyay** reported in **(2020) 14 SCC 396**. The fact that another co-accused has been granted bail should not be mechanically considered so as to grant bail to an accused but the facts and circumstances carefully scrutinized before granting the accused bail as held in **Ramesh Bhavan Rathod vs. Vishanbhai Hirabhai Makwana (Koli) and Anr.** reported in **(2021) 6 SCC 230**.

In **Satender Kumar Antil vs. Central Bureau of Investigation and Anr.** reported in **(2022) 10 SCC 51**, the Supreme Court remarked as follows:-

“94. Criminal courts in general with the trial court in particular are the guardian angels of liberty. Liberty, as embedded in the Code, has to be preserved, protected, and enforced by the criminal courts. Any conscious failure by the criminal courts would constitute an affront to liberty. It is the pious duty of the criminal court to zealously guard and keep a consistent vision in safeguarding the constitutional values and ethos. A criminal court must uphold the constitutional thrust with responsibility mandated on them by acting akin to a high priest.”

The court endorsed the views expressed in its earlier decisions that human liberty was invaluable, there was a presumption of innocence unless an accused was proved guilty, commission of an economic offence did not disentitle the accused to bail, bail not jail was the rule, gravity of the offence had to be adjudged from the sentence prescribed for the alleged offence. [See also **Jagjeet Singh and Ors. vs. Ashish Mishra alias Monu and Anr.** reported in **(2022) 9 SCC 321** and **Y vs. State of Rajasthan and Anr.** reported in **(2022) 9 SCC 269.**]

OUR CASE

The accusation against the petitioner is of an economic offence. It relates to alleged misappropriation of crores of money collected from the public from 2011 onwards. The person aggrieved by this alleged misappropriation did not file a complaint till 10 years later in 2020. By 2020 the petitioner would have destroyed whatever evidence it wanted to destroy to absolve her of the crime. If she did not, in my opinion, there is little chance of its destruction now. The investigating agency has had a decade to make itself aware of the crime and to take steps for prosecution. It did not. Prosecution started only after the de-facto complainant made an application before the criminal court. On the basis of this, FIR was registered. Had the complaint been made contemporaneously, it would have carried much more weight than having been made.

When it is said that the gravity of offence would be a factor in determining whether bail is to be granted, it does not mean that the court has to adjudicate on the elements of the crime or the charges to find out its nature, extent and depth. On the basis of the charges framed, the court is only required to ascertain the nature of the crime. If the whole of the charges in the charge sheet were proved, what would be the magnitude of the crime and the sentence the accused was likely to suffer. Thereafter, a prima facie determination of the guilt of the accused.

The previous record of the accused or in other words antecedents would undoubtedly be a factor to be taken into account. His influence over the potential witnesses or the investigating agency or the likelihood of the accused destroying evidence is also a relevant factor. I think the greater the enormity of the crime, more cautious should the prosecution be to keep the witnesses and the evidence free from interference. In such a situation, more could be the propensity of the accused to interfere with the trial, would be a safe presumption for the court. It would be required to assess the reasonable likelihood of the accused trying to interfere with the potential witnesses or tamper with the evidence so as to save himself.

The principles which emerge are as follows:-

- (i) Human liberty is sacrosanct.
- (ii) It is invaluable for a human being in any civilized society.
- (iii) It is granted as a fundamental right under Articles 19 and 21 of the Constitution of India, read with Article 14 thereof.
- (iv) There is presumption of innocence of an accused unless proved guilty after a proper trial.
- (v) Bail is the rule and jail is the exception.
- (vi) The court considering an application for bail is not to adjudicate upon the commission of the crimes.
- (vii) It is only required to assess the gravity of the offence from an assessment of the fact whether there are reasons to believe that the

accused is guilty of the crime and the prima facie case against him, the magnitude of the offence on the charges levelled against him and the sentence he would undergo if those charges were proved.

- (viii) Whether there was reasonable likelihood of the accused interfering with witnesses.
- (ix) Whether there was reasonable likelihood of the accused destroying the evidence against him.
- (x) A verification of the antecedents of the accused so as to enable the court to follow a belief whether or not he would indulge in similar crime if released on bail.
- (xi) The likelihood of the accused "thwarting the course of justice".
- (xii) The reasonable likelihood of the accused fleeing from justice.
- (xiii) Whether the release of the accused on bail would be prejudicial to the society.

In this case, after filing of the criminal complaint, investigation was quickly carried out by the investigating agency by seizure of the documents, tracking of all bank accounts, their attachment and so on. Investigation was closed and charge sheet submitted.

If the Danis genuinely settled the suit on receiving the said sum or a substantial portion of it advanced by them to the Kankarias, the theory of filtration of the money from the Danis to the Kankarias and thereafter, to the petitioner through a relative of the petitioner, Bengani loses some force.

If for more than 12 years, the accused has not absconded, there is little reason to believe pending trial the accused would abscond. She has surrendered her passport with the investigating agency. Furthermore, there is little scope of recovery of more evidence to convict the accused.

In any case, the prosecution has not even submitted that a supplementary charge sheet is being made ready. Just a mere submission that more investigation is required, is not enough unless some proof is laid before the court that there are some materials on which further charges can be framed

and that the accused is in a position to tamper with that evidence or otherwise interfere with the trial.

One co-accused is released on bail.

For these reasons, this is a fit case for grant of bail.

We direct that the petitioner shall be released on bail upon furnishing a bond of Rs.10,000/- with two sureties each of like amount, one of whom must be local, to the satisfaction of the learned 3rd Additional District Judge, Alipore (Special court), subject to the condition that the petitioner shall appear before the trial court on every date of hearing until further orders and shall not intimidate the witnesses and/or tamper with evidence in any manner whatsoever.

In the event the petitioner fails to appear before the trial court it shall be at liberty to cancel her bail in accordance with law without further reference of this court.

She will not leave the limits of Kolkata without informing the Investigating Officer.

She will also deposit his passport, if any, with such Officer within seven days.

The application for bail (CRM(DB) 4148 of 2022) is, accordingly, disposed of.

Urgent certified photo copy of this judgment and order, if applied for, be furnished to the appearing parties on priority basis upon compliance of necessary formalities.

I agree,

(BISWAROOP CHOWDHURY, J.)

(I. P. MUKERJI, J.)