REPORTABLE

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 220 OF 2015
(ARISING OUT OF SLP (CRL.) NO.7506 OF 2014)

DR. VINOD BHANDARI ...APPELLANT

VERSUS

STATE OF M.P. ...RESPONDENT

J U D G M E N T

ADARSH KUMAR GOEL, J.

1. Leave granted.

2. This appeal has been preferred against final judgment and order dated 11th August, 2014 passed by the High Court of Madhya Pradesh at Jabalpur in Misc. Criminal Case No.10371 of 2014 whereby a Division Bench of the High Court dismissed the bail application filed by the appellant.

3. M.P. Vyavsayik Pareeksha Mandal (M.P. Professional Examination Board) known as Vyapam conducts various tests for admission to professional courses and streams. It is a statutory body constituted under the provisions of M.P. Professional Examination Board Act, 2007. As per FIR No.12 of 2013 registered on 30th October, 2013 at police station, S.T.F., Bhopal under Sections 420, 467, 468, 471, 120B of the Indian Penal Code ("IPC") read with Section 3(d), 1, 2/4 of the Madhya

Pradesh Manyata Prapt Pariksha Adhiniyam, 1937 and under Sections 65 and 66 of the I.T. Act, Shri D.S. Baghel, DSP (STF), M.P. Police Headquarters, Bhopal during the investigation of another case found that copying was arranged in PMT Examination, 2012 at the instance of concerned officers of the Vyapam and middlemen who for monetary consideration helped the undeserving students to pass the entrance examination to get admission to the M.B.B.S course in Government and Private Medical Colleges in the State of M.P. As per the material collected during investigation, in pursuance of conspiracy, the appellant Dr. Vinod Bhandari, who is the Managing Director of Shri Aurbindo Institute of Medical Sciences, Indore, received money from the candidates through co-accused Pradeep Raghuvanshi who was working in Bhandari Hospital & Research Centre, Indore as General Manager and who was also looking after the admissions and management work of Shri Aurbindo Institute of Medical Sciences, Indore, for arranging the undeserving candidates to pass through the MBBS Entrance Examination by unfair means. He gave part of the money to Nitin Mohindra, Senior Systems Analyst in Vyapam, who was the custodian of the model answer key, along with Dr. Pankaj Trivedi, Controller of Vyapam. During investigation, disclosure statement was made by Pradeep Raghuvanshi which led to the recovery of money and documents. The candidates, their guardians, some officers of the Vyapam and middlemen were found to be involved in the scam. It appears that there are in all 516 accused out of which 329 persons

have been arrested and 187 are due to be arrested. Substantial investigation has been completed and charge sheets filed but certain aspects are still being investigated and as per direction of this Court in a Petition for Special Leave to Appeal (C) .... CC No.16456 of 2014 titled "Ajay Dubey versus State of M.P. & Ors.", final charge sheet is to be filed by the Special Task Force on or before March 15, 2015 against the remaining accused. Allegations also include that some high scorer candidates were arranged in the examination centre who could give correct answers and the candidates who paid money were permitted to do the copying. Other *modus operandi* adopted was to leave the OMR sheets blank which blank sheets were later filled up with the correct answers by the corrupt officers of Vyapam. Further, the model answer key was copied and made available to concerned candidates one night before the examination. Each candidate paid few lakhs of rupees to the middlemen and the money was shared by the middlemen with the officers of the Vyapam. The appellant received few crores of rupees in the process from undeserving candidates to get admission to the M.B.B.S. and, as per allegation in the other connected matter, i.e., FIR No.14 of 2013 registered on 20th November, 2013 with the same police station, to the PG medical courses.

4. In the present case, the appellant was arrested on 30th January, 2014 while in the other FIR he was granted anticipatory bail on 16th January, 2014. Second Bail application of the appellant in the present case was considered by the 9th Additional Sessions Judge, Bhopal and dismissed vide Order dated 9.5.2014. Earlier, first bail application had been dismissed on 5th February, 2014. While declining prayer for bail, it was, *inter-alia,* observed :

> *"In the present case, it is alleged against the accused that he in connivance with the officers of coordinator State level institution (VYAPAM) in lieu of huge amount got the candidates selected in the examination after getting them passed in the Pre-Medical Test (PMT) Examination, which is mandatory and important for admission in the medical education institution. According to the prosecution, applicant snatched right of deserving and scholar students, he got selected ineligible candidates in the field of medical education. This case is not only related to economic offence, rather apart from depriving rights of deserving and scholar students, it is related to the human life and health."*

5. The Division Bench of the High Court, in its Order, referred to the supplementary *challan* filed against the appellant on 24th April, 2014, indicating the following material :

> *"Offence of the accused :*
>
> *The accused Dr. Vinod Bhandari has been the Managing Director of S.A.I.M.S., Indore and prior to the P.M.T. Examination 2012 he had in collusion with Nitin Mohindra, Senior System Analyst of Vyapam, for getting some of his candidates passed in the P.M.T. Examination, 2012 and stating to send list of his candidates and cash amount through*

his General Manager Pradeep Raghuvanshi, subsequently he sent list of his 08 candidates and 60 lakh rupees in cash through his General Manager and 07 candidates out of aforesaid candidates were got passed by using unfair means with the connivance of Nitin Mohindra by way of filling up the circles in their O.M.R. sheets and received the amount in illegally manner by hatching conspiracy which has been recovered/seized from his General Manager Pradeep Raghuvanshi. In this manner, the accused has committed a serious crime in well designed conspiracy by hatching conspiracy and committed organized crime.

Evidences available against the accused :-

1. The certified copy of the excel sheet of the data retrieved from the hard disc seized from the office of the accused Nitin Mohindra;

2. The documents, note sheets and the activity chart of P.M.T. Examination, 2012 seized from Vyapam;

3. The list of 150 candidates seized from Shri Aurbindo Institute of Medical Sciences College, Indore in respect of M.B.B.S. admission for the session 2012-13 at the instanced of the accused Dr. Bhandari;

4. Memorandums of other accused persons;

5. The seizure memo of the amount seized from Pradeep Raghuvanshi."

6. While declining bail, the High Court observed :

"To put it differently after considering all aspects of the matter as the material already placed along with the first charge-sheet prima facie indicates complicity of the applicant in the commission of the crime and is not a case of no evidence against the applicant at all; coupled with the fact that if the charge is proved against the applicant, the offence is punishable with life sentence; as the role of the applicant is being part of the conspiracy and is the kingpin; further that the applicant is allegedly involved in huge money transaction including to

> *sponsor 8 candidates who were to appear in the VYAPAM examination; and is also prosecuted for another offence of similar type of having sponsored 8 other candidates; and has the potential of influencing the witnesses and other evidence and more importantly the investigation of the large scale conspiracy is still incomplete; as also keeping in mind the past conduct of the applicant in going abroad soon after the registration of the Crime No.12/2013 and returning back to India on 21.1.2014 only after grant of anticipatory bail on 16.1.2014, for all these reasons, for the time being, the applicant cannot be admitted to the privilege of regular bail."*

7. We have heard learned counsel for the parties.

8. Main contention advanced on behalf of the appellant is that the appellant has already been in custody for about one year and there is no prospect of commencement of trial in the near future. Even investigation is not likely to be completed before March 15, 2015. There are about 516 accused and large number of witnesses and documents. Thus, the trial will take long time. In these circumstances, the appellant cannot be kept in custody for indefinite period before his guilt is established by acceptable evidence. Our attention has been invited to order dated 27th November, 2014 passed by the trial Court, recording the request of the Special Public Prosecutor for deferring the proceedings of the case till the cases of other accused against whom supplementary charge sheets were filed were committed to the Court of Session and till supplementary charge sheet was filed against several other accused persons. In the said order, the Court directed

the Investigating Officer to indicate as to against how many accused persons investigation is pending and the time frame for filing charge sheets/supplementary charge sheets. In response to the said order, the Investigating Officer, vide letter dated 25th December, 2014 filed before the trial Court, stated that 329 persons had already been arrested and 187 were yet to be arrested and efforts were being made to file the charge sheets by March 15, 2015 in compliance of the directions of this Court. Thus, the submission on behalf of the appellant is that in view of delay in trial, the appellant was entitled to bail.

9. On the other hand, learned counsel for the State opposed the prayer for grant of bail by submitting that this Court ought not to interfere with the discretion exercised by the trial Court and the High Court in declining bail to the appellant. He points out that the trial Court and the High Court have dealt with the matter having regard to all the relevant considerations, including the nature of allegations, the material available, likelihood of misuse of bail and also the impact of the crime in question on the society. He pointed out that the Courts below have found that there is a clear prima facie case showing complicity of the appellant, the offence was punishable with life sentence, the appellant was the kingpin in the conspiracy, he had the potential of influencing the witnesses, investigation was still pending and the appellant had earlier gone abroad to avoid arrest.

10. Referring to the counter affidavit filed on behalf of the State, he points out that in the excel sheet recovered from Nitin Mohindra, the appellant has been named and in the statement under Section 164 Cr.P.C. Dr. Moolchand Hargunani disclosed that he had met the appellant who asked him to meet Pradeep Raghuvanshi for admission to PMT and he was asked to pay Rs.20 lakhs. He could not pay the said amount and his son could not get the admission. A sum of Rs.50 lakh for PMT Examination and 1.2 crores for Pre PG Examination, 2012 was received from Pradeep Raghuvanshi who was General Manager of the appellant's hospital and in charge of admission to the institute of the appellant.

11. We have given due consideration to the rival submissions and perused the material on record.

12. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. Reference may be made to decisions of this Court in ***Kalyan Chandra***

Sarkar vs. ***Rajesh Ranjan***[1]***,*** ***State of U.P.*** vs. ***Amarmani Tripathi***[2]***,***

State of Kerala vs. ***Raneef***[3] and ***Sanjay Chandra*** vs. ***CBI***[4]***.***

13. In ***Kalyan Chandra Sarkar (supra)***, it was observed :

> ***"8.*** *It is trite law that personal liberty cannot be taken away except in accordance with the procedure established by law. Personal liberty is a constitutional guarantee. However, Article 21 which guarantees the above right also contemplates deprivation of personal liberty by procedure established by law. Under the criminal laws of this country, a person accused of offences which are non-bailable is liable to be detained in custody during the pendency of trial unless he is enlarged on bail in accordance with law. Such detention cannot be questioned as being violative of Article 21 since the same is authorised by law. But even persons accused of non-bailable offences are entitled to bail if the court concerned comes to the conclusion that the prosecution has failed to establish a prima facie case against him and/or if the court is satisfied for reasons to be recorded that in spite of the existence of prima facie case there is a need to release such persons on bail where fact situations require it to do so. In that process a person whose application for enlargement on bail is once rejected is not precluded from filing a subsequent application for grant of bail if there is a change in the fact situation. In such cases if the circumstances then prevailing require that such persons be released on bail, in spite of his earlier applications being rejected, the courts can do so."*

14. In ***Amarmani Tripathi (supra)***, it was observed :

> ***18.*** *It is well settled that the matters to be considered in an application for bail are (i)*

1 (2005) 2 SCC 42
2 (2005) 8 SCC 21
3 (2011) 1 SCC 784
4 (2012) 1 SCC 40

whether there is any prima facie or reasonable ground to believe that the accused had committed the offence; (ii) nature and gravity of the charge; (iii) severity of the punishment in the event of conviction; (iv) danger of the accused absconding or fleeing, if released on bail; (v) character, behaviour, means, position and standing of the accused; (vi) likelihood of the offence being repeated; (vii) reasonable apprehension of the witnesses being tampered with; and (viii) danger, of course, of justice being thwarted by grant of bail [see Prahlad Singh Bhati v. NCT, Delhi[(2001) 4 SCC 280] and Gurcharan Singh v. State (Delhi Admn.) [(1978) 1 SCC 118]. While a vague allegation that the accused may tamper with the evidence or witnesses may not be a ground to refuse bail, if the accused is of such character that his mere presence at large would intimidate the witnesses or if there is material to show that he will use his liberty to subvert justice or tamper with the evidence, then bail will be refused. We may also refer to the following principles relating to grant or refusal of bail stated in Kalyan Chandra Sarkar v. Rajesh Ranjan [(2004) 7 SCC 528]: (SCC pp. 535-36, para 11)

> *"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind. It is also*

necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

(a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.
(b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.
(c) Prima facie satisfaction of the court in support of the charge. (See Ram Govind Upadhyay v. Sudarshan Singh [(2002) 3 SCC 598]1 and Puran v. Rambilas [(2001) 6 SCC 338.)"

22. *While a detailed examination of the evidence is to be avoided while considering the question of bail, to ensure that there is no prejudging and no prejudice, a brief examination to be satisfied about the existence or otherwise of a prima facie case is necessary. An examination of the material in this case, set out above, keeping in view the aforesaid principles, disclose prima facie, the existence of a conspiracy to which Amarmani and Madhumani were parties. The contentions of the respondents that the confessional statement of Rohit Chaturvedi is inadmissible in evidence and that that . should be excluded from consideration, for the purpose of bail is untenable. This Court had negatived a somewhat similar contention in Kalyan Chandra Sarkar thus: (SCC p. 538, para 19)*

"19. The next argument of learned counsel for the respondent is that prima facie the prosecution has failed to produce any material to implicate the respondent in the crime of conspiracy. In this regard he submitted that most of the

witnesses have already turned hostile. The only other evidence available to the prosecution to connect the respondent with the crime is an alleged confession of the co-accused which according to the learned counsel was inadmissible in evidence. Therefore, he contends that the High Court was justified in granting bail since the prosecution has failed to establish even a prima facie case against the respondent. From the High Court order we do not find this as a ground for granting bail. Be that as it may, we think that this argument is too premature for us to accept. The admissibility or otherwise of the confessional statement and the effect of the evidence already adduced by the prosecution and the merit of the evidence that may be adduced hereinafter including that of the witnesses sought to be recalled are all matters to be considered at the stage of the trial."

15. In ***Raneef (supra)***, it was observed :

"15. *In deciding bail applications an important factor which should certainly be taken into consideration by the court is the delay in concluding the trial. Often this takes several years, and if the accused is denied bail but is ultimately acquitted, who will restore so many years of his life spent in custody? Is Article 21 of the Constitution, which is the most basic of all the fundamental rights in our Constitution, not violated in such a case? Of course this is not the only factor, but it is certainly one of the important factors in deciding whether to grant bail. In the present case the respondent has already spent 66 days in custody (as stated in Para 2 of his counter-affidavit), and we see no reason why he should be denied bail. A doctor incarcerated*

for a long period may end up like Dr. Manette in Charles Dicken's novel A Tale of Two Cities, who forgot his profession and even his name in the Bastille."

16. In ***Sanjay Chandra (supra)***, it was observed :

"21. *In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.*

24. *In the instant case, we have already noticed that the "pointing finger of accusation" against the appellants is "the seriousness of the charge". The offences alleged are economic offences which have resulted in loss to the State exchequer. Though, they contend that there is a possibility of the appellants tampering with the witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not*

> *the only test or the factor: the other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Penal Code and the Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the constitutional rights but rather "recalibrating the scales of justice".*

17. In the light of above settled principles of law dealing with the prayer for bail pending trial, we proceed to consider the present case. Undoubtedly, the offence alleged against the appellant has serious adverse impact on the fabric of the society. The offence is of high magnitude indicating illegal admission to large number of undeserving candidates to the medical courses by corrupt means. Apart from showing depravity of character and generation of black money, the offence has the potential of undermining the trust of the people in the integrity of medical profession itself. If undeserving candidates are admitted to medical courses by corrupt means, not only the society will be deprived of the best brains treating the patients, the patients will be faced with undeserving and corrupt persons treating them in whom they will find it difficult to repose faith. In these circumstances, when the allegations are supported by material on record and there is a potential of trial being adversely influenced by grant of bail, seriously

jeopardising the interest of justice, we do not find any ground to interfere with the view taken by the trial Court and the High Court in declining bail.

18. It is certainly a matter of serious concern that the appellant has been in custody for about one year and there is no prospect of immediate trial. When a person is kept in custody to facilitate a fair trial and in the interest of the society, it is duty of the prosecution and the Court to take all possible steps to expedite the trial. Speedy trial is a right of the accused and is also in the interest of justice. We are thus, of the opinion that the prosecution and the trial Court must ensure speedy trial so that right of the accused is protected. This Court has already directed that the investigation be finally completed and final charge sheet filed on or before March 15, 2015. We have also been informed that a special prosecutor has been appointed and the matter is being tried before a Special Court. The High Court is monitoring the matter. We expect that in these circumstances, the trial will proceed day to day and its progress will be duly monitored. Material witnesses may be identified and examined at the earliest. Having regard to special features of this case, we request the High Court to take up the matter once in three months to take stock of the progress of trial and to issue such directions as may be necessary. We also direct that if the trial is not completed within one year from today for reasons not attributable to the appellant, the appellant will be

entitled to apply for bail afresh to the High Court which may be considered in the light of the situation which may be then prevailing.

19. The appeal is accordingly disposed of with the above observations. We make it clear that observations in our above judgment will not be treated as expression of any opinion on merits of the case and the trial Court may decide the matter without being influenced by any such observation.

.....J.
(T.S. THAKUR)

.....J.
(ADARSH KUMAR GOEL)

NEW DELHI
FEBRUARY 4, 2015