

27/10/2015

Shri Abhishek Parashar, learned counsel for the applicant.

Shri Vivek Khedkar, learned Assistant Solicitor General of Union of India for the respondent No.2- CBI (VYAPAM Cell), Bhopal.

CBI Counsel is under receipt of case diary. Hence, the matter is taken up for final adjudication.

Heard.

On behalf of the applicant, this petition is preferred under Section 439 of the Code of Criminal Procedure for grant of bail, as he is in custody since 04.04.2015 in connection with Crime No.138/2013 registered at Police Station Jhansi Road, Gwalior for the offences of Sections 419, 420, 467, 468, 471, 109, 120-B IPC and Section 3/4 of Examination Act.

Applicant's counsel after taking us through the rejection order of the Sessions Court and the copy of charge-sheet filed against the applicant from his brief and other papers and bail orders passed by the Principal Seat of this court, in connection of Crime No.390/2011 initially registered at Police Station Gopalganj, Sagar argued that besides the present case, the applicant was also implicated as a middleman in the aforesaid crime No.390/2011 initially registered at Police Station Gopalganj Sagar and in such case Rakesh Kumar Singh was also implicated as a middleman, who as per the allegation, was also implicated as an accused in the present matter and till date he has not been arrested in the present matter as per the prosecution but in this regard no objection was taken on behalf of the prosecution agency before the Principal seat of this court at the time of passing the order

dt.13.10.2015 in M.Cr.C.No.16190/2015, by which such Rakesh Kumar Singh has been extended the benefit of bail by the Principal Seat of this court and the applicant was also extended the benefit of bail vide order dt.4.9.2015 in M.Cr.C.No.13828/2015 and no objection was taken in the light of the present matter while passing such order of the bail by the Principal Seat of this court. He further said that in the present matter father of the applicant, who provided him the huge sum, has not been arrested, although he has approached CBI Officer for his interrogation but till date he has not been arrested. He further said that mere perusal of the papers of the charge sheet, it is apparent that the ingredients of the alleged offence are not made out. He further said that if on taking into consideration the entire evidence submitted along-with the charge-sheet is accepted in its entirety, even then the ingredients of the alleged offence are not made out against the applicant. In further argument, we are apprised that except the aforesaid Rakesh Kumar Singh, all other connected co-accused, who are related with the admission of the applicant as a student have been arrested and the applicant has already suffered more than six months in the judicial custody and he should not be kept for longer period by way of pre-trial punishment and prayed for extending the benefit of bail to the applicant by allowing this petition.

On the other hand, the aforesaid prayer is opposed by the CBI Counsel with the assistance of Case Diary saying that looking to the nature of the offence and the manner in which it was committed by the applicant as a student in the alleged scam, for which sufficient *prima facie* evidence is available against him in the charge sheet, the applicant

does not deserve for grant of bail. He further said that according to his information, the CBI agency is not arresting the father of the applicant. He further said that true it is that at the time of granting the bail to the co-accused Rakesh Kumar Singh by the Principal Seat of this court in the aforesaid Crime No.390/2011, the objection on the basis of the impugned case for rejection of such bail was not taken and he also conceded that although such Rakesh Kumar Singh was in judicial custody in the aforesaid crime of Sagar, but he was not arrested in the present matter for the best reasons known to the prosecution officer and prayed for dismissal of the petition.

Having heard the counsel, keeping in view the arguments advanced, we have perused the case diary as well as the copy of the charge sheet and the aforesaid bail orders passed by the Principal Seat of this court. It is apparent that the applicant was implicated as a middleman alongwith Rakesh Kumar Singh in the aforesaid Crime No.390/2011 initially registered at Police Station Gopalganj Sagar and in such matter the applicant as well as the aforesaid Rakesh Kumar Singh have been released on bail while in the present matter the present applicant has been implicated as a student alleging that after obtaining the sum from his father he has managed the affairs to secure the admission in illegal manner in the medical course through one middleman Santosh Kumar Sharma, who through other middleman Rakesh Kumar Singh has managed the affairs of solver and secured the admission for the applicant. It is apparent in the case diary that Santosh Kumar Sharma has been arrested and is in judicial custody while Rakesh

Kumar Singh has not been arrested by the investigating agency inspite that he was already in custody in the aforesaid crime No.390/2011 registered at Police Station Gopalganj Sagar. So taking into consideration such circumstances alongwith the situation that all other connected accused have been arrested in the matter and at present there is no need of the applicant-student for further interrogation in the supplementary investigation. Consequently, without expressing any opinion on the merits of the matter, this petition is allowed and subject to compliance of following terms and conditions, the applicant is extended the benefit of bail.

- (I) The applicant after releasing on bail shall report to the CBI Office, Chambal Colony Thatipur, Gwalior for his appearance on every **second and fourth Sunday** of the month between 10:00 to 12:00 O'clock to assist the Investigating Officer in holding the further/supplementary investigation of the impugned case against the other co-accused.
- (II) The applicant shall also deposit his passport, before the Court of Warrant Magistrate or notified trial Court of the impugned case, if he is having the same.
- (III) The applicant shall not leave the boundaries of the State of M.P. without prior permission of this court/trial court/concerning Investigating Officer, as the case may be.

Subject to aforesaid compliance, on furnishing a personal bond of **Rupees one lac** alongwith one surety of the like amount to the satisfaction of notified trial Court of the case, applicant – **Tapas Sharma** shall be released on bail, with a direction that he will remain present on each and every date of the trial before the trial Court and

5

M. Cr. C. No. 7319/2015
[Tapas Sharma Vs. State of MP & CBI]

shall abide by all the terms and conditions enumerated under Section 437(3) of CrPC.

His single non-appearance shall cancel his bail automatically by the trial Court concerned, without any further order of this Court.

Certified copy.

(U.C.Maheshwari)
Judge

(Sushil Kumar Gupta)
Judge

SP