Before Swatanter Kumar & Ashutosh Mohunta, JJ

BALDEV SINGH—*Petitioner*

versus

STATE OF PUNJAB & OTHERS—*Respondents*

C.M. NO. 16614 OF 2002

in C.W.P. NO. 8270 OF 2002

18th June, 2002

Constitution of India, 1950—Arts. 226/227—Code of Criminal Procedure, 1973—S. 439—Quashing of FIR by invoking jurisdiction of writ under Arts. 226/227—Petitioner filing application under section 439 of the Code for grant of regular bail—Maintainability of the application—Whether the High Court has jurisdiction to entertain such an application directly—Held, yes—Power of the High Court under section 439 of the Code cannot be circumscribed by any limitation —Petitioner continues to be in custody for the last 2 months— Prosecution failing to show the cause of his further detention— Application allowed, bail granted to the petitioner while imposing some conditions.

Held, that in each and every case, irrespective of the facts and circumstances, presentation of an application to the Court of Sessions/competent Court, cannot be treated as an absolute bar to presentation of a petition for regular bail under Section 439 of the Code before the High Court. The power of the High Court under Section 439 of the Code more particularly read in conjunction with Articles 226/227 of the Constitution of India cannot be circumscribed by the limitation prepounded on behalf of the State. Hence, the present application is maintainable and non-presentation of bail application before the Court of Sessions/competent jurisdiction does not render this petition not maintainable.

(Paras 12 & 13)

Further held, that the petitioner was remanded to Police custody for a considerable period and thereafter has been in judicial

custody. The petitioner from the date of his arrest on 20th April, 2002 continues to be in custody till date. Learned counsel appearing for the State has not been able to bring to our notice as to why the petitioner should be further detained in judicial custody. It has not been informed to the Court if any recovery is to be effected from the petitioner or the police requires him for custodial interrogation to achieve any further break-through in the investigation. In the circumstances aforestated and without commenting upon the merits of the contentions we direct that the petitioner be released on bail.

(Paras 16 & 17)

RAJIV ATMA RAM, Sr. Advocate with

C.K. BAKSHI, Advocate *for the petitioner*

D.V. SHARMA, Addl. A.G. Punjab for the State of Punjab.

JUDGMENT

SWATANTAR KUMAR, J.

(1) FIR No. 11 dated 16th May, 2002, under Sections 420, 467, 120-B IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988 was registered, amongst others, against the petitioner. In the writ petition, the petitioner prayed for quashing of this FIR, Annexure P/11 to the writ petition, and also claims other reliefs.

(2) A Division Bench of this Court,—*vide* its order datd 27th May, 2002 issued notice of motion on the writ petition returnable on 29th July, 2002 and ordered that notice of motion by the Court shall not be construed as hindrance in the progress/investigation of the case. Civil Misc. No. 16024 of 2002 was filed by the petitioner under section 439 of Criminal Procedure Code, hereinafter referred to as the Code, read with Articles 226/227 of the Constitution of India for grant of regular bail in relation to FIR No. 8 dated 25th April, 2002, which was dismissed as withdrawn,—*vide* order dated 10th June, 2002, as the same was beyond the perview and scope of the main relief covered in the writ petition.

(3) Another Criminal Misc. No. 16614 of 2002 was filed by the petitioner again under section 439 of the Code read with Articles 226/227 of the Constitution of India praying for regular bail in FIR No. 11 dated 16th May, 2002, which is subject matter of the present writ petition, on the grounds stated therein. The similar Division Bench,—*vide* its order dated 31st May, 2002 directed the matter to be listed on 3rd June, 2002, subject to permission of the Judges constituting the Bench during vacations. On 3rd June, 2002, the Division Bench in vacations directed notice of the application to be issued to the State for 10th June, 2002. At the request of counsel for the State, the application was adjourned for hearing to 11th June, 2002,—*vide* order dated 10th June, 2002. That is how, the matter came up before this Division Bench on 10th June, 2002 for hearing. Arguments were heard on 10th and 11th of June, on which date the matter was reserved for orders.

(4) The contents of the FIR, Annexure P/11, reads as under:—

"Date and time of Report No. 11 dated 16th May, 2002 at 7.15 p.m.

From reliable sources Shri Surjit Singh Khosa, D.S.P.V.B. Phase I, Punjab, Chandigarh

420, 467, 120-B IPC and 13(1)(d) R/W 13(2) of Corr. Act., 1988, D9/10 com.

It has come to notice that on 26th April, 2002, during his visit to the public of Vidhan Sabha Circle, Nabha, according to the demand of the Panchayats of those villages, the then Chief Minister wrote to the Financial Commissioner, Punjab, RDP for purchase of two Drag Line machines for digging the Chhapar. On 16th May, 2001, on this subject. the C.P.F. while submitting the guidelines of 10th Finance Commission in his own way to the DRDP, prepared a proposal for purchase of 16 such other machines which the then DRDP sent his approval to the FC and the then RDP also approve the proposal whereas the Chief Minister has only asked for purchase of two machines only. A committee was constituted by the MRDP for purchased these machines

in which the D.R.D.P., C.P.F. (Finance) C.E., D.D. (LD) were members. A notice of 7/8 days was directly given to the Press for the tender. On 1st June, 2001, an advertisement was given at his own level whereas the same has to be issued through PR and a notice of at least of 21 days was to be given. The tenders were invited by the DRDP on 8th June, 2001. In the advertisement of the tender, the number of the machines were not mentioned. The Chairman and the DRDP were transferred in this period and the C.E. told about this fact only on 8th June 2001 to the F.C. who gave right of recommendations to the C.E. and D.D. (LD) to the MRDP on the same day whereas the orders for putting the file immediately for further action were passed on 9th June, 2001. On 8th June, 2001 the proceedings regarding tenders were conducted only by the C.E. On 13th June, 2001, the FC at his own level put up a noting for purchase of 20 machines but the then MRDP only approved the purchase of 18 machines which were purchased. The F.C. with reference to the oral orders of the C.M. on telephone, put up a note for purchase of another 50 machines, which was marked to the D.R.D.P. The machines were purchased on the basis of the price of Rs. 13,24,962 at which earlier machines were purchased. On the basis of your letter a note for purchase of another 50 machines was prepared on 3rd November, 2001, on which the approval of only 35 machines was granted by the then M.R.D.P. For running these machines, drivers were also employed, whose services were later on terminated and in this way the machines of crores of rupees are standing without any work. Similar machines were also purchased by the State of Haryana which were purchased for Rs. 10,35,086 thereby causing direct loss to the Government in connivance with the officers and other persons of the department for which basically C.L. Premi, C.P.F./D.D.P., Department of RDP and other officers of the department are liable. Shri Baldev Singh, C.E. Conducted the proceedings for processing

the tender himself, whereas it was necessary that the same should have been done by the Committee. Therefore, the aforesaid officers in order to make profit for themselves have caused loss to the Government and have committed offences under sections 420, 467, 120-B IPC, 13(1)(d) read with 13(2). After registering a case under these Sections a copy of the FIR be sent to me. I will myself investigate the case."

(5) Learned counsel appearing for the petitioner raised the following contentions to substantiate his prayer for grant of bail to the petitioner :—

(a) The petitioner was neither the initiating nor the final authority to place orders for the machines in question ;

(b) That the order for the machines was placed as per the directions of the Chief Minister and Minister In-charge and after approval of the Financial Commissioner/Secretary concerned :

(c) The appraisal report, after opening of the tenders, which was submitted by the petitioner to the FCR, DP was neither accepted nor acted upon by the Government. In fact the same was sent for counter-checking and comments of a technical person in the concerned department and machines having been ordered subsequently under the orders of the higher authorities no way implicate the petitioner in commission of any offence.

(d) The petitioner has acted *bona fidely* and on established principles of business in the State Government and has not offended or violated any rules or regulations.

(e) As per the bare reading of the FIR the Chief Minister, Minister-in-charge as well as the Financial Commissioner/Secretary are directly involved. In fact it is under their direct orders that the machines/increased number of machines was purchased and no action is being taken against them nor anybody

has been arrested. The petitioner is being made a scape goat in the entire process.

(f) The petitioner had been in police remand and thereafter is in judicial custody now for a total period of about two months. No fruitful purpose would be achieved now by his continuing in jail.

(d) The involvement of the petitioner is *mala fide* in these cases as the petitioner had approached the Court in earlier actions and the Court had granted him relief as per the details given in the writ petition.

(6) On the other hand, learned counsel appearing for the State contended that the petitioner has exceeded his authority in opening the tenders himself and then placing the orders for increased machines. The petitioner with ulterior motive and to have personal wrongful gain, by causing wrongful loss to the Government, has purchased the machines at higher prices then for the amounts for which they were available in the market. Resultantly, he has caused serious loss to the Government running in lacs. He also contended that the petitioner, if released on bail is likely to hamper the investigation and may tamper with the record keeping in view his official status as Chief Engineer.

(7) Besides the above contentions on merits, the counsel for the State also raised a plea that the present bail application under section 439 of the Code, was not maintainable before this Court and the petitioner should be directed to approach the Court of competent jurisdiction for grant of relief. While relying upon the judgment of the Hon'ble Supreme Court in the case of ***Kartar Singh*** **versus** ***State of Punjab (1),*** he also contended that the High Court should grant bail under Article 226 of the Constitution of India.

(8) We would first deal with the question of maintainability of the present application before this Court and power of the Court to grant such a relief.

(9) The language of Sections 438 and 439 of the Code is parimateria. However, provisions of Section 438 operate pre-arrest,

(1) 1994 (2) RCR 168

while that the Section 439 post-arrest, but the powers of the High Court and the Court of Sessions under both these Sections are concurrent. The Legislature in its wisdom has vested the power in both the Courts concurrently. The power exercisable by either of the Courts is not circumscribed by any specified limitations. It is wide power vested in the Courts which is required to be exercised with due regard to the settled canons of law and in consonance with the judicial discipline. The caution in exercising such discretionary power is inbuilt in the spirit of the law. The case of ***Kartar Singh*** (supra) relied upon by the learned counsel for the State would hardly have any bearing on the matters in issue in the present case. In that case, the Hon'ble Court was concerend with the provisions of Sections 20(7) of TADA Act which had imposed a restriction upon grant of bail to a detenu under the Act. Still the Hon'ble Apex Court clearly held that it cannot be said that High Court has no jurisdiction to entertain bail application under Article 226 of the Constitution of India, though the High Court would exercise such power sparingly in rare and in extreme circumstances. Thus, the judgment relied upon no way advances the argument raised on behalf of the State. A Single Bench of this Court in the case of ***Ranjit Singh Virk*** **versus** ***State of Punjab(2)*** had taken a view that approaching the Court of competent jurisdiction/ Sessions Judge, would not be mandatory for invoking the jurisdiction of this Court under Section 438 of the Code. We have already discussed that there can be no absolute rule in this regard. Each case would have to be decided on its own merits. It is settled principle of interpretation of Statute that powers of the Court must receive a wider meaning to achieve the ends of justice. Interpretation must further the cause of justice rather than curtail its powers on the principle of implication and procedure.

(10) Under the Code, power has been vested in the High Court to grant bail keeping in view the facts and circumstances of a case. This power cannot be negated on any inference or by implication. It is true that normally where a person has been arrested, it will be more appropriate that the accused should approach the Court of Sessions/ the competent Court, for grant of regular bail and upon rejection thereof could approach the High Court. But this cannot be stated as a hard and fast rule. Each case would have to be dealt with and appropriate orders passed on its own merit. It would neither be proper

(2) 1997 (3) RCR 207

nor permissible to circumvent the powers of the Court when the Legislature has declined to impose any such restriction. In this behalf reference can be made to a Division Bench judgment of this Court in **Bajrang & Pardeep Kumar** *versus* **State of Haryana, Crl. M.No. 7268 of 1997 in Crl. Appeal No. 312-DB of 1997, decided on 28th May, 1997,** where the Court was concerned with the question whether any limitation can be imposed upon the powers of the Appellate Court in regard to suspension of sentence under Section 389 of the Code, and the Court answering the question in the negative held as under :—

> "The provisions of Section 389(1) of the Code do not admit any limitation and if legislature has opted not to impose any limitation for grant of such relief, it will be difficult for the Court to hold that such limitation can be read into statute by Judicial pronouncement. Every case must be adjudicated on its own facts, merits and demerits. It is not possible to prescribe jacket formula which will govern all cases and would adequately provide parameters on the basis of which each bail application could be granted or declined."

> "We find it difficult to define the limitation in such cases which could be imposed on the powers exercisable by the Appellate Court as prescription of such limits by judicial intent, we fear, may neither be possible nor permissible keeping in view the statutory provisions governing the subjects. It has been repeatedly held by various Courts that laying down of conditions which would universely apply in granting or refusing a bail application irrespective of other factors, grounds and reasons, may ultimately prove more disadvantageous then furthering the case of these statutory provisions which give a definite right to an accused or convict. In the famous case of **Kashmira Singh** *versus* **State of Punjab, AIR 1977 Supreme Court 2147,** the Hon'ble Supreme Court of india while dealing with the arguments identical to the one advanced on behalf of the State in Subhash Chand's case *(supra)*, before the learned Division Bench of this Court and accepted by the Division Bench, was repelled by the Supreme Court

while declining the relief and it expressed its view as follows:—

"The practice not to release on bail a person who has been sentenced to life imprisonment was evolved in the High Court and in the Supreme Court **on the basis that once a person has been found quilty and sentenced to life imprisonment, he should not be let loose so long as his conviction and sentence are not set aside, but the underlying postulate of this practice was that the appeal of such would be disposed of** within a measurable distance of time, so that if he is ultimately found to be innocent, he would not have to remain in jail for an unduly long period. **The rationable of this practice can have no application where the Court is not in a position to dispose of the appeal for fourt, five or six years."**

(11) It is always desirable for the Courts to adopt an approach, which is balanced. A balanced approach is necessary to meet the ends of justice. The maxium *salus populi est suprema lex* is subject to the limitations of supremacy of State safety ***(D.K. Basu* versus *State of West Bengal (3).*** Similarly a balanced approach in exercise of its judicial discretion is to be adopted by the Court in consonance with settled canons of law as to whether the High Court should or should not entertain an application directly under Section 439 of the Court.

(12) In the light of the above law, it is clear that in each and every case, irrespective of the facts and circumstances, presentation of an application to the Court of Sessions/Competent Court, cannot be treated as an absolute bar to presentation of a petition for regular bail under Section 439 of the Court before the High Court. The power of the High Court under Section 439 of the Code, more particularly read in conjunction with Articles 226/227 of the Constitution of India cannot be circumscribed by the limitation prepounded on behalf of the State before us.

(13) In the present case, as already noticed, a petition under Articles 226/227 of the Constitution of India for quashing of FIR

(3) AIR 1997 SC 610

No. 11, dated 16th May, 2002, along with other reliefs in relation to the investigation had been filed, upon which a notice has been issued. In other words, the matter squarely falls in the domain of jurisdiction of the High Court under Article 226. In that petition bail application has been moved. We are of the considered view that the present application is maintainable and non-presentation of bail application before the Court of Sessions/Competent Jurisdiction does not render this petition not maintainable.

(14) It is also a settled principle of law that the Court while considering the matter of bail should normally not discuss merits of the case and in any case not at length. Only a prima-facie view is to be formed on which basis the Court would record its primary satisfaction. Any observations which would hamper or even impliedly obstruct fair trial should be avoided. The Court must endeavour its best to avoid any prejudice either to the prosecution or to the accused in the trial of the case.

(15) The very reading of the FIR reproduced above shows that the machines were purchased on the oral directions of the Chief Minister and written orders of the Minister-in-charge and on the approval of the Financial Commissioner/Secretary concerned. The prosecution admittedly has made no attempt till today, though a considerable period has elapsed, to make a custodial examination of either of these dignitries, much less arresting them. We have carefully examined the contents of the FIR and even the records including the police file which was produced before us during the course of hearing. It is not disputed by the learned counsel for the State that the appraisal note put up by the petitioner was not directly acted upon by the State and it was sent,—*vide* note of the Financial Commissioner dated 11th June, 2001, to the Technical Department for verification and comments. No doubt, as per the case of the prosecution, the petitioner has caused financial loss to the State and he opened the tenders individually in absence of the committee constituted for this purpose.

(16) First, the petitioner was remanded to police custody for a considerable period and thereafter has been in judicial custody. The petitioner, from the date of his arrest on 20th April, 2002 continues to be in custody till date. Learned counsel appearing for the State has not been able to bring to our notice as to why the petitioner should

be further detained in judicial custody. It has not been informed to the Court if any recovery is to be effected from the petitioner or the police requires him for custodial interrogation to achieve any further break-through in the investigation. The argument of learned counsel for the State that the petitioner would tamper with the records if released on bail by misusing his official status is without any foundation inasmuch as the petitioner has already been suspended from the post of Chief Engineer. The files are not in the office but have already been taken into custody by the Investigating Officer.

(17) In the circumstances aforestated and without commenting upon the merits of the contentions aforenoticed we direct that the petitioner be released on bail subject to his furnishing a personal bond in the sum of Rs. 2,00,000 with two sureties of the like amount, to the satisfaction of the concerned Chief Judicial Magistrate/Illaqa Magistate. The petitioner shall not leave the territorial jurisdiction of this Court without leave of the trial Court and will not leave the country in any case. He shall not, in any way, hamper or interfere with the progress of the investigation. He shall fully co-operate in the investigation and make himself available as and when directed to appear by the Investigating Officer. In the event the petitioner offends any of the aforestated conditions, liberty to the State to move for cancellation of bail granted to the petitioner.

J.S.T.

Before J.S. Narang, J

UNION OF INDIA,—*Appellant*

versus

RAJESH KUMAR ALIAS RAJESH KUMAR LHIHA.—*Respondent*

F.A.O. 3271 of 2002

23rd July, 2002

Railways Act, 1989—Ss.123, 124 & 124-A—Amputation of left leg below knee of the respondent due to over-crowding in the train—Claim for compensation—Negligence on the part of the Railways—Railways failing to show that the passengers commensurate to the seats available in the compartment had boarded the train—No infirmity