

S/L No. 1-5
(Suppl.)
19.05.2021
gd/ssd/cm/
Debajyoti/Kole/
Tanmoy

(Through Video Conference)

I.A. No. CAN/1/2021
With
I.A. No. CAN/2/2021
With
I.A. No. CAN/3/2021
With
I.A. No. CAN/4/2021
With
I.A. No. CAN/5/2021
In
WPA 10504 of 2021

CBI ACB Kolkata

Vs.

Shri Firhad Hakim @ Bobby Hakim & Ors.

Mr. Tushar Mehta, Solicitor General of India
Mr. Y.J. Dastoor, Additional Solicitor General of India
Mr. Samrat Goswami, Advocate
...for the petitioner and Applicants in CAN 5 through
V.C.

Dr. Abhishek Manu Singhvi, Senior Advocate
Mr. Kalyan Bandopadhyay, Senior Advocate
Mr. Sandip Dasgupta, Advocate
Mr. Niladri Bhattacharya, Advocate
Mr. Ayan Kumar De, Advocate
... for the applicants in CAN Nos.1,3 & 4
through V.C.

Mr. Siddharth Luthra, Senior Advocate
Mr. Debayan Sen, Advocate
... for the respondent in CAN No.2 of 2021
through V.C.

Mr. Kishore Dutta, Advocate General,
Mr. Abhratosh Majumder, Addl. Advocate General,
Mr. Sayan Sinha, Advocate
...for the State through V.C.

Arijit Banerjee, J.:

These four applications have been filed by four accused persons in a criminal case initiated against them and others under Section 120B of the Indian Penal Code read with Sections 7, 13(2) and 13(1)(a) & (d) of the Prevention of Corruption Act, 1988. The applications are

for recalling of an order dated May 17, 2021 passed by this Court in WPA 10504 of 2021. By the said order, this Court had stayed the operation of the bail order passed by the learned Judge, Special CBI Court No.I, City Sessions Court, Calcutta, on May 17, 2021 in favour of the present applicants who had been taken into custody on that very day in the morning. It was further directed that the accused persons shall be treated to be in judicial custody till further orders. The reasons for which this Court had stayed the operation of the bail order are recorded in this Court's order dated May 17, 2021 which had nothing to do with the merits of the bail order.

The operative portion of this Court's order dated May 17, 2021 reads as follows :

“The facts which are not in dispute are that a case under the Prevention of Corruption Act was registered against many accused including some of the Ministers in the present Government in the State of West Bengal, on the directions issued by this Court. In view of various orders passed by the Supreme Court, the investigation and prosecution of cases against M.P.s and M.L.A.s were to be monitored by the Court. It was only thereafter that the matter was expedited. Sanction of prosecution was granted by the Competent Authority and four accused were arrested in the morning today. They were to be produced in the Court. Immediately after their arrest, the mob started collecting outside the CBI Office. Not only this, at 10.50 hours, even the Chief Minister of State- Smt. Mamta Banerjee sat on dharna in the office of CBI. It is claimed by Mr. Tushar Mehta, learned Solicitor General of India that she was demanding their unconditional release but the fact that she was present there and some supporters were also there, was not denied by learned Advocate General. In addition to that the stand of learned counsel for the C.B.I. is that the Law Minister of the State along with supporters mobbed the Court where the accused were to be presented along with charge sheet. The Law Minister remained in the Court complex throughout the day till

the arguments were heard. In these facts and circumstances if any order is passed by the Court the same will not have faith and confidence of the people in the system of administration of justice. Confidence of the people in the justice system will be eroded in case such types of incidents are allowed to happen in the matters where political leaders are arrested and are to be produced in the Court. Public trust and confidence in the judicial system is more important, it being the last resort. They may have a feeling that it is not rule of law which prevails but it is a mob which has an upper hand and especially in a case where it is led by the Chief Minister of the State in the office of CBI and by the Law Minister of the State in the Court Complex. If the parties to a litigation believe in Rule of Law such a system is not followed. The idea was different.

In our opinion aforesaid facts are sufficient to take cognizance of the present matter with reference to the request of the learned Solicitor General of India for examination of the issue regarding transfer of the trial. We are not touching the merits of the controversy but the manner in which pressure was sought to be put will not inspire confidence of the people in the rule of law. As during the period when the arguments were heard, the order was passed by the Court below, we deem it appropriate to stay that order and direct that the accused person shall be treated to be in judicial custody till further orders. The authority in whose custody they are kept shall ensure that they have all medical facilities available as are required and they are treated in terms of the provisions of the Jail Manual.”

The grounds urged in the present applications for recalling of this Court’s order dated May 17, 2021 are manifold including the ground that the said order was passed without giving notice to the applicants who have been vitally affected by the said order having been deprived of the benefit of the bail order passed by the learned Court below. We are in the process of hearing of these applications along with CAN 5 of 2021 filed in WPA No.10504 of 2021 by the Central Bureau of Investigation (CBI) wherein the prayers are firstly, for transfer of the

criminal proceedings to this Court in exercise of power under Section 407 of the Code of Criminal Procedure; secondly, to declare the proceedings dated May 17, 2021 before the learned Court below to be nullity in the eyes of law; and thirdly, for continuance of this Court's order dated May 17, 2021 pending final hearing and disposal of CBI's application. Hearing of the said applications are yet to be concluded. However, a prayer has been made for interim bail on behalf of the four accused persons.

As stated above, by this Court's order dated May 17, 2021, the order of bail granted in favour of the four accused persons was stayed until further orders.

We have heard Dr. Abhisek Manu Singhvi, Mr. Siddharth Luthra and Mr. Kalyan Bandopadhyay, Senior Advocates appearing for the applicants in the recalling applications, Mr. Tushar Mehta, learned Solicitor General of India appearing for the CBI and Mr. Kishore Datta, learned Advocate General for the State of West Bengal. This order is confined to the issue of whether or not interim bail should be granted to the accused persons as was done by the learned Court below.

Admittedly, the accused persons are all advanced in age. As submitted by learned Counsel, the applicant in CAN 1 of 2021 is about 62 years old; the applicant in CAN 2 of 2021 is about 75 years old; the applicant in CAN 3 of 2021 is around 80 years old and the applicant in CAN 4 of 2021 is about 75 years old. It is also not in dispute that

the applicants suffer from various age related and other ailments. In fact, presently, the applicants in CAN 2 of 2021, CAN 3 of 2021 and CAN 4 of 2021 are stated to be in a hospital in judicial custody. It has not been disputed by learned Counsel for CBI that the applicants have always co-operated with the Investigating Officer. Three of the applicants are Members of the Legislative Assembly of West Bengal and two of them are also State Cabinet Ministers. One of the applicants is a former Mayor of Calcutta. They are all permanent residents of Calcutta. There is little chance of absconsion or flight risk insofar as the applicants are concerned.

Learned Solicitor General of India submitted that if the applicants are enlarged on bail, they are likely to tamper with evidence and intimidate prosecution witnesses by using their high position and influence in the society. This argument does not appeal to me. The case is of 2014. The FIR is of 2017. If the applicants indeed had to tamper with evidence, they would have done it by now.

Admittedly, investigation against the present applicants is complete and charge-sheet has been submitted against them. This is stated unequivocally in paragraphs 9 and 10 of the remand application filed by CBI before the learned Court below. It is also stated that further investigation against the other accused persons is continuing. If that be so, I have not understood as to how custodial detention of the applicants is necessary any

more, or how further investigation against the other accused persons will be hampered if the applicants are not detained in custody.

Additionally, the Hon'ble Supreme Court has also said that in these times of the COVID-19 pandemic, bail should be granted liberally unless custodial detention of the accused is absolutely essential.

In view of the aforesaid, I am of the view that the applicants have made out a *prima facie* case for interim bail. Accordingly, the applicants, namely, Firhad Hakim @ Bobby Hakim, Shri Sovan Chatterjee, Madan Mitra and Subrata Mukherjee, shall be enlarged on bail upon furnishing bail bonds of Rs.50,000/- (Rupees Fifty Thousand) each with two sureties of Rs.25,000/- (Rupees Twenty Five Thousand) each to the satisfaction of learned Chief Metropolitan Magistrate, Calcutta and on further condition that they must co-operate with the Investigation Officer in respect of further investigation of the case and shall meet the Investigating Officer once every fortnight until further orders. The applicants shall also not, whether by themselves or through any other person, make any attempt to tamper with evidence or intimidate/threaten any of the prosecution witnesses. In case of breach of any of the said conditions, the interim bail hereby granted will be liable to be cancelled.

(Arijit Banerjee, J.)