

SHOBHAN SINGH KHANKA

v.

THE STATE OF JHARKHAND

(Criminal Appeal No. 592 of 2012)

MARCH 30, 2012

[P. SATHASIVAM AND J. CHELAMESWAR, JJ.]

Code of Criminal Procedure, 1973:

s.438 - Anticipatory bail - Criminal proceedings against Chairman and Members of State Public Service Commission and Examiners regarding large scale bungling and manipulation of marks - Inquiry by Vigilance department - FIR lodged - Appellant, an Expert also arraigned as an accused - Application for anticipatory bail of appellant rejected by Special Judge and High Court - Held: Considering the limited allegation against the appellant in the FIR and other details, his academic qualifications including the fact that he does not belong to the State and has no relatives and is not a Member of the JPSC, acted as Expert only for a short period, the appellant has made out a case for anticipatory bail - Even if the prosecution has any apprehension, sub-s. (2) of s. 438 enables the court concerned to impose such conditions/directions as it may think fit - Appellant, in the event of arrest, directed to be released on bail, subject to the conditions stipulated in the judgment.

s.438 - Anticipatory bail - Factors to be considered - Explained.

On an inquiry conducted by the vigilance department, it was revealed that in holding the second Jharkhand Public Service Commission Civil Services Examination - 2005, there had been large-scale bungling, manipulation, tampering of marks, irregularity in

A appointment of Examiners, and the Members of the Interview Board and the Chairman in connivance with the Members and also in conspiracy with the successful candidates for securing monetary gains to the officials of JPSC, by practicing corrupt method, made
 B recommendations to the Government for appointment of various persons. It was also alleged that the Members either had not given declaration regarding their relatives appearing in the examination or had not provided the required details. An FIR was lodged against several
 C persons, including the Chairman and Members of the JPSC as also the appellant who was engaged as an Expert. This gave rise to Special case No. 23 of 2010 for offences under the IPC and Prevention of Corruption Act, 1988.

D The appellant filed an application for anticipatory bail u/s 438 CrPC which was rejected by the Special Judge as also by the High Court.

Allowing the appeal, the Court

E HELD: 1.1. It is settled law that personal liberty is a precious fundamental right. While considering the claim of pre-arrest bail, the factors to be considered are: (i) the nature and gravity of the accusation; (ii) the antecedents of the applicant including the fact as to whether he has
 F previously undergone imprisonment on conviction by a Court in respect of any cognizable offence; (iii) the possibility of the applicant to flee from justice; and (iv) whether the accusation has been made with the object of injuring or humiliating the applicant by having him so
 G arrested. [para 7 and 12] [669-C; 671-C-F]

H 1.2. It is not in dispute that the appellant is not a regular Member of the JPSC nor he belong to the State of Jharkhand. Admittedly, he is in Central Government service and he was nominated as Expert No.1 by the

Board. The appellant has excellent academic career. He has been a regular expert in the Selection Committees of UGC, AICTE, ICSSR and other Universities. He has to his credit the authorship of numerous Research/Reference Books and Textbooks. Recently, he was awarded "Shiksha Rattan Puraskar" by the Governor of Arunachal Pradesh. The President of India based on the academic qualification of the appellant nominated him as her nominee for recruitment of Assistant/Associate Professors in the Faculty of Commerce and Management in the Indira Gandhi National Tribal University, Amar Katak, Madhya Pradesh. [para 8] [669-D-G-H; 670-A-B]

1.3. The perusal of the FIR also shows that the appellant was not acquainted with or related to any of the candidates interviewed by the panel of which he was a Member. In view of the assertion that the appellant does not belong to the State of Jharkhand and has no relatives, friends or kinsmen in the State of Jharkhand, there is no prima facie case to include him in the alleged conspiracy. Considering his academic qualifications and experience and taking note of his claim that of an impeccable career as academician and of the fact that he has no interest in the State of Jharkhand, this Court holds that the appellant has made out a case for anticipatory bail u/s 438 of the Code of Criminal Procedure, 1973. Even if the prosecution has any apprehension, sub-s. (2) of s. 438 enables the court concerned to impose such conditions/directions as it may think fit. [para 11-12] [670-H; 671-A-B; 671-G]

1.4. The order passed by the Special Judge as well as the High Court dismissing the petition of the appellant for anticipatory bail are set aside. Accordingly, it is directed that in the event of arrest, the appellant shall be released on bail subject to the conditions laid down in the judgment. [para 13] [671-H; 672-A]

A CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
No. 592 of 2012.

From the Judgment & Order dated 21.09.2011 of the High
Court of Jharkhand at Ranchi A.B.A. No. 3230 of 2011.

B Uday U. Lalit, Nitin Sangra, Satyajeet Saha, V.D. Khanna
for the Appellant.

Sunil Kumar, Chhaya Kumari, Anil K. Jha for the
Respondent.

C The Judgment of the Court was delivered by

P. SATHASIVAM, J. 1. Leave granted.

D 2. This appeal is directed against the judgment and order
dated 21.09.2011 passed by the High Court of Jharkhand at
Ranchi in A.B.A. No. 3230 of 2011 whereby the High Court
rejected the application for anticipatory bail filed by the
appellant herein.

E 3. Brief facts:

F (a) The appellant herein, who acted as one of the Expert
in the Interview Board to the Jharkhand Public Service
Commission (in short "the JPSC"), filed a petition before the
Special Judge (Vigilance), for anticipatory bail under Section
G 438 of the Code of Criminal Procedure, 1973 (in short "the
Code") in connection with Special Case No. 23 of 2010 arising
out of Vigilance PS No. 23 of 2010 under Sections 420, 423,
424, 467, 468, 469, 471, 477A, 120-B, 109 and 201 of the
Indian Penal Code, 1908 (in short "the IPC") and Section 13(2)
read with Section 13(1) (c) (d) of the Prevention of Corruption
Act, 1988.

H (b) According to the appellant, he was intimated that he
had been nominated as Expert No1 in the Interview Board for
holding interview from 28.01.2008 to 01.02.2008. He was

selected by the Members of the Expert Committee including the Chairman of the JPSC. A

(c) The allegations against the appellant, Chairman and other Members of the JPSC are that they provided highest marks to the candidates whom they desire to be selected or appointed by giving undue favour. The appellant is also responsible for conspiracy with the Chairman, Members of the JPSC and the candidates who were given highest marks by the Interview Board. It is also alleged that the appellant is responsible for cutting, manipulation, interpolation in the marks sheet of the Interview Board in order to provide benefit to the candidates for selection and appointment. B
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(d) The prosecution case in a nutshell is that an enquiry was conducted by the vigilance department regarding the irregularity committed by the Chairman, Members and officers of the JPSC in conducting Second JPSC Civil Services Examination pursuant to advertisement No. 7 of 2005 dated 12.11.2005. It is alleged by the prosecution that the examination was not held in accordance with the guidelines. The Members either have not given declaration regarding their relation appearing in the examination and those who have given declaration have not provided the required details. The further allegation of the prosecution is that there has been manipulation in the numbers awarded to the students. The prosecution examined 22 copies and it has been alleged that they have found manipulation in the answer sheets. It is the further case of the prosecution that there has been large-scale bungling, manipulation, tampering of marks, irregularity in the appointment of Examiners and Members of the Interview Board and the Chairman in connivance with the Members and also in conspiracy with the successful candidates for securing monetary gains to the officials of JPSC in utter disregard to the rules and by practicing corrupt method recommendations for appointment of various persons were made to the Government. Accordingly, a First Information Report (in short "FIR") was lodged against several persons including the appellant. D
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A (e) By order dated 01.08.2011, the Special Judge
(Vigilance) Ranchi, on consideration of the materials refused
to enlarge the appellant on anticipatory bail and rejected his
petition. Against the order of the Special Judge, the appellant
preferred A.B.A. No. 3230 of 2001 before the High Court of
B Jharkhand at Ranchi. By impugned order dated 21.09.2011,
the High Court confirmed the order of the Special Judge and
dismissed his petition for anticipatory bail.

4. Heard Mr. Uday U. Lalit, learned senior counsel for the
C appellant and Mr. Sunil Kumar, learned senior counsel for the
respondent-State of Jharkhand.

5. After taking us through all the materials including the FIR
and the allegations pertaining to the present appellant, Mr. Lalit,
learned senior counsel submitted that in the FIR except for
D stating that the appellant was one of the Expert, there is nothing
which can even remotely connect the appellant with any offence
much less the offences alleged therein. He also submitted that
the appellant who hails from District Pithoragarh, Uttarakhand,
presently posted at Faridabad, Haryana has no relatives,
E friends or kinsmen in the State of Jharkhand and, therefore, had
no reason or motive to favour anybody and in that event be a
part of any conspiracy to commit the alleged crime. He further
pointed out the role of the appellant as Expert Member was only
to award marks to each candidate on a separate sheet and
F had nothing to do beyond it. He also pointed out that the
observation of the High Court in the impugned order rejecting
his anticipatory bail application on the ground that the appellant
stands on a similar footing as that of other accused is factually
incorrect inasmuch as the appellant cannot be equated with the
G case of other Experts who belong to the State of Jharkhand and
are alleged to be related or known to candidates and, therefore,
had no reason or motive to commit the alleged crime. On the
other hand, learned counsel for the State submitted that
considering the serious nature of the crime and of the fact that
the appellant's initial selection as expert is itself contrary to the
H rules and several manipulations have been done by all the

persons concerned in the selection panel, it is not a fit case in which the anticipatory bail is to be granted.

6. We have carefully perused the relevant materials and considered the rival contentions.

7. Inasmuch as we are concerned about the eligibility or otherwise relating to grant of anticipatory bail, there is no need to go into all the factual details and arrive a finding one way or the other which will affect the ultimate trial of the case. We have already referred to the offences alleged in the FIR. It is settled law that personal liberty is a precious fundamental right. With this background, we have to see that whether a case has been made out for grant of anticipatory bail.

8. It is not in dispute that he is not a regular Member of the JPSC. Admittedly, he is in Central Government service and he was nominated as Expert No.1 by the Board. Thought it is pointed out that his nomination itself is bad, that is not a relevant issue at this moment. Mr. Lalit, learned senior counsel for the appellant pointed out his higher academic qualifications. All those details are available in Annexure-P1 which shows that the appellant possesses qualifications of M.Com., (Gold Medallist) and holder of 5 Ph.Ds. He is a Professor and Coordinator in Fellow Programme and Management in National Institute of Financial Management of the Central Government and he has an experience of 16 years as Professor since 21.10.1994. He has 13 years administrative experience as Head of the Department of Business Administration and 13 years experience as Dean in the School of Management Studies. The appellant has specialization in Human Resources Management, Organisational behaviour and Entrepreneurship Development and besides that, he has experience on International Exposure of visiting Professor in other foreign countries. It is also pointed out that the appellant has been a regular expert in the Selection Committees of UGC, AICTE, ICSSR and other Universities. He has to his credit the authorship of numerous Research/Reference Books and

A Textbooks. Recently on 26.05.2011, the appellant was awarded "Shiksha Rattan Puraskar" by H.E. the Governor of Arunachal Pradesh. It is also brought to our notice that in July, 2011, Hon'ble the President of India based on the academic qualification of the appellant nominated him as her nominee for
 B recruitment of Assistant/Associate Professors in the Faculty of Commerce and Management in the Indira Gandhi National Tribal University, Amar Kantak, Madhya Pradesh. The above details show that the appellant has excellent academic career.

C 9. In the FIR, the appellant has been named as accused No.7. Though it is pointed out that the appellant has given highest marks to the candidates who were given only 10 marks by the Chairman of the Interview Board, it is not in dispute that he is not a Member of the JPSC Board nor belongs to
 D Jharkhand State. As stated earlier, he was selected as specialized member for a short period only. Mr. Lalit has also taken us through the chart showing marks given by experts including the present appellant - Expert No.1, Expert No.2 and the Chairman Shanti Devi. Interestingly, the Chairman has
 E allotted 10 marks to each of the candidate irrespective of his/her performance. We are not here to assess and give a finding whether the marks awarded by the appellant (Expert No.1) is excessive or unreasonable. All those things have to be analyzed only at the time of trial by way of evidence.

F 10. Though the High Court has concluded that on the ground of parity and on the similar footing that the other co-accused declined to grant anticipatory bail, we are of the view that inasmuch as all other Members of the Board including the
 G Chairman belong to Jharkhand and some of their relatives participated in the selection and considering the fact that the present appellant has no connection with the JPSC and hails from a different State, namely, Uttarakhand, the said observation/conclusion is not acceptable.

H 11. The perusal of the FIR also shows that the appellant was not acquainted with or related to any of the candidates

interviewed by the panel of which he was a Member. In view of the assertion that the appellant does not belong to the State of Jharkhand and has no relatives, friends or kinsmen in the State of Jharkhand, there is no prima facie case to include him in the alleged conspiracy. Considering his academic qualifications and experience and taking note of his claim that of an impeccable career as academican and of the fact that he has no interest in the State of Jharkhand, we hold that the appellant has made out a case for anticipatory bail under Section 438 of the Code.

12. While considering the claim of pre-arrest bail, the following factors have to be considered:

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested.

Considering the limited allegation in the FIR and other details, his academic qualifications including the fact that he does not belong to the State of Jharkhand and has no relatives and is not a Member of the JPSC, acted as Expert No.1 only for a short period, the appellant has made out a case for anticipatory bail. Even if the prosecution has any apprehension, sub-section (2) of Section 438 enables the court concerned to impose such conditions/directions as it may thinks fit.

13. Under these circumstances, the order passed by the Special Judge as well as the High Court dismissing his petition

A for anticipatory bail are set aside. Accordingly, we direct that in the event of arrest, the appellant shall be released on bail in connection with PS case No. 23 of 2010 corresponding to Special Case No. 23 of 2010, Vigilance PS, Ranchi, Jharkhand subject to the following conditions:-

- B (i) the appellant shall make himself available for interrogation as and when required;
- (ii) the appellant shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;
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- (iii) the appellant shall not leave India without the previous permission of the special court.
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14. It is made clear that the conclusion reached by us is limited to the disposal of the application for anticipatory bail and the Special Judge is free to decide the charges in the ultimate trial in accordance with law uninfluenced by any of the observation/conclusion made herein.

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15. The appeal is allowed on the above terms.

R.P.

Appeal allowed.