

THE STATE OF BIHAR & ANR.

v.

AMIT KUMAR @ BACHCHA RAI

(Criminal Appeal No. 767 of 2017)

APRIL 20, 2017

[N. V. RAMANA AND PRAFULLA C. PANT, JJ.]

*Bail – Grant of – Challenge to – Bihar Toppers Scam – In Intermediate examination conducted by Bihar Intermediate Education Council, the students of some colleges were successful in occupying first ten places in merit list – This was followed by scathing reports in electronic media about their poor intellectual capacity – Subsequently, written complaint was lodged by the Director of Secondary Education – Consequently, FIR was registered u/s.420, 465, 468, 471, 120B of Penal Code – Pursuant thereto, investigation was conducted, which led to arrest of respondent along with other accused persons – However, High Court granted conditional bail to respondent – On appeal, held: Respondent-accused is charged with economic offences of huge magnitude and is alleged to be the kingpin/ring leader – During investigation, various documents relating to property, cash and in addition to this, large number of answer sheets, letter heads, rubber stamps of several authorities, admit cards, illegal fire arm etc. were recovered, which establishes a prima facie case against the respondent – Offences alleged, if proved, may jeopardize the credibility of education system of Bihar – Further, investigating agency is going to file additional charge sheet – Therefore, respondent's presence in custody is necessary for further investigation – Not advisable to release respondent on bail at this stage – Code of Criminal Procedure, 1973 – s.439 – Penal Code, 1860 – ss. 420, 465, 468, 471,120B – Constitution of India – Art.21.*

**Allowing the appeal, the Court**

**HELD: 1.** A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time.

A When the seriousness of the offence is such mere fact that he was in jail for however long time should not be the concern of the Courts. There was a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar. [Para 9][508-B-D]

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2. The accused is charged with economic offences of huge magnitude and is alleged to be the kingpin/ring leader. Further it is alleged that the respondent-accused is involved in tampering with the answer sheets by illegal means and interfering with the examination system of Bihar Intermediate Examination 2016 and thereby securing top ranks, for his daughter and other students of Vishnu Rai College, in the said examination. During the investigation when a search team raided his place various documents relating to property and land to the tune of Rs. 2.57 Cr. were recovered besides Rs.20 lakhs in cash. In addition to this, allegedly a large number of written answer sheets of various students, letter heads and rubber stamps of several authorities, admit cards, illegal fire arm etc. were found which establishes a *prima facie* case against the respondent. The allegations against the respondent are very serious in nature, which are reflected from the excerpts of the case dairy. The offences alleged, if proved, may jeopardize the credibility of the education system of State of Bihar. [Para 10][508-D-G]

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3. There is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of the Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged. Although 'bail is the rule and jail is an exception' is well established in our jurisprudence, competing forces present in facts and circumstances of each case have to be measured before enlarging a person on bail. [Para 12][509-B-D]

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4. It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in

the matter of bail. Usually socio-economic offence has deep rooted conspiracies affecting the moral fiber of the society and causing irreparable harm and needs to be considered seriously. [Para 14][510-B-C]

5. Further, the investigating agency is going to file additional charge sheet. Therefore, the respondent's presence in the custody may be necessary for further investigation. Furthermore, the order of the High Court cannot be approved, in directing the concerned investigating authority to file the charge sheet within a month, as the case involves almost 32 accused and a complex *modus operandi*. Considering the gravity of the offence and several other crucial factors it is not advisable to release the accused/ respondent on bail at this stage. [Paras 15, 16][510-C-E]

*Sanjay Chandra v. CBI* (2012) 1 SCC 40 : [2011] 13 SCR 309 – distinguished.

*Nimmagadda Prasad v. CBI* (2013) 7 SCC 466; *Y.S. Jagan Mohan Reddy v. CBI* (2013) 7 SCC 439 – relied on.

*Bihar Legal Support Society v. Chief Justice of India* (1986) 4 SCC 767 : [1987] 1 SCR 295; *Masroor v. State of U.P.* (2009) 14 SCC 286 : [2009] 6 SCR 1030 – referred to.

Case Law Reference

[1987] 1 SCR 295	referred to	Para 7
[2009] 6 SCR 1030	referred to	Para 7
[2011] 13 SCR 309	distinguished	Para 7
(2013) 7 SCC 466	relied on	Para 14
(2013) 7 SCC 439	relied on	Para 14

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 767 of 2017.

From the Judgment and Order dated 14.02.2017 of the High Court of Judicature at Patna in Criminal Miscellaneous No. 53391 of 2016.

Siddharth Luthra, Sr. Adv., E. C. Vidya Sagar, Manish Kumar, Advs. for the Appellants.

A U. R. Lalit, Sr. Adv., Chandra Bhushan Prasad, Mehual Sharma,  
Adv. for the Respondent.

The Judgment of the Court was delivered by

**N. V. RAMANA, J.** 1. Leave granted.

B 2. This criminal appeal is filed by State of Bihar against the final  
judgment and order dated 14.02.2017 passed in Criminal Miscellaneous  
No. 53391 of 2016, by the High Court of Judicature at Patna, wherein  
the High Court has passed following order:

C “Considering the entire facts and circumstances of this case,  
especially the period of custody already undergone by the petitioner,  
let the petitioner, above named, be enlarged on bail on furnishing  
D bail bond of Rs. 20,000/- (Twenty Thousand) with two local sureties  
of the like amount each to the satisfaction of learned Special Judge,  
vigilance, 1<sup>st</sup>, Patna/successor court in connection with Special  
E case No. 32 of 2016 arising out of Patna Kotwali Police Station  
Case No. 270 of 2016 after framing of the charge in the case  
which must be framed within a month, failing which the petitioner  
would be released on bail on furnishing bail bond with condition  
that the petitioner shall fully co-operate with the trial of the case  
and shall not indulge in any educational activity till the conclusion  
of the trial or any criminal activities. On report of subsequent  
criminal activity of the petitioner, the court below shall be at liberty  
to cancel his bail bond in this case also”.

3. Aggrieved by the above order of the High Court, granting  
conditional bail to the respondent, State of Bihar is in appeal before us.

F 4. Brief factual matrix in the present matter is that the students of  
one Vishnu Rai College, Kiratpur Raja Ram Bhagwanpur, Vaishali, were  
successful in occupying first ten places in the merit list of Intermediate  
Examination conducted by Bihar Intermediate Education Council.  
Subsequently there was a report in the electronic media about the poor  
G intellectual capacity of those who have topped the Intermediate  
Examination in the State of Bihar. In light of scathing media reports,  
students whose names were part of the merit list were called for an  
interview before the Bihar Schools Complex Committee. Subsequently  
a written complaint was lodged by the Director of Secondary Education.  
Consequently an FIR bearing P.S. Case No. 270/2016 dated 06.06.2016

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was registered before the Kotwali Police Station Patna under Section 420, 465, 468, 471, 120B of Indian Penal Code, 1860. Thereafter, investigation was conducted which revealed fraudulent practices prevailing in Bihar Intermediate Examination involving students and management of the said Vishnu Rai College resulting in the arrest of the respondent herein.

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5. Assailing the impugned order of the High Court, which granted conditional bail to the respondent, learned senior counsel Mr. Siddharth Luthra appearing on behalf of the State of Bihar contended that, the High Court erred in not taking into consideration the gravity of the offence. He further contended that the respondent herein, Principal of Vishnu Rai College, is the king pin of what is publically known as 'Bihar Toppers Scam' and thereby countered the argument of parity. Relying on the excerpts of the case diary and seizure memo, which were not considered by the High Court, he pointed out that a *prima facie* case is made out against the respondent and consequently prayed for of setting aside the impugned order which granted conditional bail for the respondent.

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6. *Per contra* learned senior counsel Mr. U.R. Lalit appearing for the respondent-accused has contended that as there is no evidence of money being exchanged by the accused, there is no possibility of conviction in this case. Further learned senior counsel for respondent has vehemently argued that, except for the evidence of the co-accused, there is no evidence to establish that there was exchange of money between the respondent and other members involved in the conspiracy. Furthermore he contended that the statements of co-accused cannot be taken into account as the same is inadmissible in the eyes of law. Moreover he pointed out that the seizure of materials like rubber stamps etc, which were found in a sister premises, cannot be relied upon.

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7. Learned senior counsel for respondent has placed reliance on *Bihar Legal Support Society v. Chief Justice of India*<sup>1</sup>, wherea Constitution Bench of this Court has observed that this Court should generally desist from intervening in matters of grant or refusal of regular bail /anticipatory bail by the High Court. Further he relied on the case of *Masroor v. State of U.P.*<sup>2</sup>, in which it was observed that this Court should not ordinarily interfere with the order of the High Court, granting or refusing bail, unless there is an exceptional circumstance. Lastiy he

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<sup>1</sup> (1986) 4 SCC 767

<sup>2</sup> (2009) 14 SCC 286

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A placed reliance on the case of *Sanjay Chandra v. CBI*<sup>3</sup>, wherein this Court had iterated that the amount of incarceration the accused may have to undergo, if he is ultimately punished, would be a relevant consideration while granting the bail.

8. Heard the learned counsel for parties and perused the documents available on record.

9. A bare reading of the order impugned discloses that the High Court has not given any reasoning while granting bail. In a mechanical way, the High Court granted bail more on the fact that the accused is already in custody for a long time. When the seriousness of the offence is such mere fact that he was in jail for however long time should not be the concern of the Courts. We are not able to appreciate such a casual approach while granting bail in a case which has the effect of undermining the trust of people in the integrity of the education system in the State of Bihar.

10. We are conscious of the fact that the accused is charged with economic offences of huge magnitude and is alleged to be the kingpin/ring leader. Further it is alleged that the respondent-accused is involved in tampering with the answer sheets by illegal means and interfering with the examination system of Bihar Intermediate Examination 2016 and thereby securing top ranks, for his daughter and other students of Vishnu Rai College, in the said examination. During the investigation when a search team raided his place various documents relating to property and land to the tune of Rs. 2.57 Cr. were recovered besides Rs.20 lakhs in cash. In addition to this, allegedly a large number of written answer sheets of various students, letter heads and rubber stamps of several authorities, admit cards, illegal fire arm etc. were found which establishes a *prima facie* case against the respondent. The allegations against the respondent are very serious in nature, which are reflected from the excerpts of the case dairy. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the credibility of the education system of State of Bihar.

11. The learned senior counsel appearing for the respondent claimed parity with twenty eight (28) other accused persons in the same case who have already been granted bail. We find that though some of accused are released on bail most of them are teachers who performed

<sup>3</sup> (2012) 1 SCC 40

the invigilation duty and members of the Managing Committee against whom the charges are not so serious. It is not appropriate to compare the case of the accused-respondent, with those who were on bail, as the respondent is alleged to be the king-pin of the entire crime. A

12. Although there is no quarrel with respect to the legal propositions canvassed by the learned counsels, it should be noted that there is no straight jacket formula for consideration of grant of bail to an accused. It all depends upon the facts and circumstances of each case. The Government's interest in preventing crime by arrestees is both legitimate and compelling. So also is the cherished right of personal liberty envisaged under Article 21 of the Constitution. Section 439 of The Code of Criminal Procedure, 1973, which is the bail provision, places responsibility upon the courts to uphold procedural fairness before a person's liberty is abridged. Although 'bail is the rule and jail is an exception' is well established in our jurisprudence, we have to measure competing forces present in facts and circumstances of each case before enlarging a person on bail. B C D

13. We are of the considered opinion that the case of *Sanjay Chandra* (supra), as relied upon by learned counsel for respondent, is distinguishable from the case at hand as the charges in that case carried a maximum punishment for a term which may extend to seven years. In the present case, charge sheet has been submitted, *inter alia*, for the offences under section 409<sup>4</sup>, 465, 467<sup>5</sup>, 468, 471, 188, 201, 212 and 120B of Indian Penal Code, 1860 and Section 8<sup>6</sup>, 9<sup>7</sup>, 13(1)(c)/(d) read with 13(2)<sup>8</sup> of Prevention of Corruption Act, 1988<sup>9</sup>. Therefore the case of *Sanjay Chandra* (supra) provides no assistance E

<sup>4</sup> Which carries punishment of imprisonment for life, or imprisonment of either description for a term which may extend up to ten years and shall also be liable for a fine. F

<sup>5</sup> Which carries punishment of imprisonment for life or with imprisonment of either description which may extend up to a term of ten years and shall also be liable to a fine.

<sup>6</sup> Which carries punishment of imprisonment for minimum of three years and may extend up to seven years with fine.

<sup>7</sup> Which carries punishment of imprisonment for minimum of three years and may extend up to seven years with fine. G

<sup>8</sup> Which carries punishment of imprisonment for minimum of four years and may extend up to ten years with fine.

<sup>9</sup> It is to be noted that Prevention of Corruption Act, 1988 was amended by 'The Lokpal and Lokayutas Act, 2013', Act I of 2014 (w.e.f 16.01.2014). This amendment has increased the minimum prescribed punishment under Section 8, 9, 13(2) of the Prevention of Corruption Act. H

A for the respondent herein.

14. We are also conscious that if any undeserving candidates are allowed to top exams by corrupt means, not only will the society be deprived of deserving candidates, but it will be unfair for those students who have honestly worked hard for one whole year and are ultimately

B disintitiled to a good rank by fraudulent practices prevalent in those examinations. It is well settled that socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail.<sup>10</sup> Usually socio-economic offence has deep rooted conspiracies affecting the moral fiber of the society and causing

C irreparable harm, needs to be considered seriously.

15. Further we cannot lose sight of the fact that the investigating agency is going to file additional charge sheet. Therefore, the respondent's presence in the custody may be necessary for further investigation. Furthermore we cannot approve the order of the High Court, in directing

D the concerned investigating authority to file the charge sheet within a month, as the case involves almost 32 accused and a complex *modus operandi*.

16. Having bestowed our thoughtful consideration to the gravity of the offence and several other crucial factors which are discussed in detail in preceding paragraphs, we are of the opinion that it is not advisable

E to release the accused/ respondent on bail at this stage. Accordingly without expressing any opinion on final merits of the case, we set aside the order of the High Court. The appeal stands allowed.

Ankit Gyan

Appeal allowed.

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<sup>10</sup> *Nimmagadda Prasad v. CBI*, (2013) 7 SCC 466; *Y.S. Jagan Mohan Reddy v. CBI*, (2013) 7 SCC 439.