

H.P.SANDESH

07/07/2022

This petition is filed under Section 439 of Cr.P.C., by the Deputy Tahsildar who is working in the office of the Deputy Commissioner seeking regular bail. 2. The case of the Anti Corruption Bureau (ACB) is that the complainant one Ajampasha had filed a complaint before the ACB on 20.05.2022 stating that in order to pass the final order in RP No.16/2020-2021 which was heard and reserved for orders on 30.03.2022 by the Deputy Commissioner and no order has been passed. In the complaint, he further says that in order to pass an order in his favour, bribe was demanded and hence, on 18.05.2022, the complainant went and met the Deputy Commissioner who has to pass an order in the reserved matter since he has not passed any order from last 1½ months inspite of the matter was reserved on 30.03.2022. The complainant met the Deputy Commissioner and he got introduced himself and the Deputy Commissioner replied referring the name of respondent No.3-Baresh and also the name of his brother-Krishnappa. It is also his complaint that along with accused No.1 i.e., the petitioner herein, he went and met the Deputy Commissioner and in the FIR also it is mentioned that when he met the Deputy Commissioner, he instructed the complainant to meet his Personal Assistant i.e., the petitioner herein and Deputy Commissioner left the office telling to see him tomorrow. The complainant went and met the Personal Assistant of Deputy Commissioner. The discussion made with the Deputy Commissioner was recorded and also the conversation between the

Personal Secretary of Deputy Commissioner and the complainant was also recorded regarding demanding of Rs.15 lakhs and the same was deliberated and he agreed to make the payment of Rs.3 lakhs but the Personal Secretary reduced the bribe amount from Rs.15 lakhs to Rs.8 lakhs, Rs.5 lakhs and ultimately, the same was scaled down to Rs.5 lakhs. Hence, the complainant went and gave the complaint before ACB along with the conversations recorded between the Deputy Commissioner and the complainant and the Personal Assistant of the Deputy Commissioner and the complainant, hence, the case was registered and again the complainant went and approached the Personal Assistant of the Deputy Commissioner and he in turn instructed him to hand over the bribe amount to accused No.2. 3. The learned counsel appearing for ACB and the learned High Court Government Pleader for the respondent-State submit that accused No.2 is not an employee in the office of the Deputy Commissioner. The trap was made while accepting the amount of Rs.5 lakhs by accused No.2 and immediately accused Nos.1 and 2 were arrested. At the time of the conversation between the complainant and the Deputy Commissioner, the Personal Assistant was also present as well as the Case Worker one Sandeep was also present. In the trap mahazar, the same is extracted in page No.3. The contents of the FIR also reflected in the trap mahazar that the Deputy Commissioner while leaving the office also talking with the staff replied that he can do the work on the next day but in order to do the work, let the party be present unless he will not do the work and given the date to come on day after

tomorrow and once again he reiterated that party be present on day after tomorrow and then he sat in the car and immediately, the complainant intervened and said Sir and he replied that see you tomorrow. The other conversation between the complainant and the Personal Assistant of Deputy Commissioner while bargaining the bribe amount, the Personal Assistant of the Deputy Commissioner when the complainant says that he will give Rs.3 lakhs and he replied that get the order from anybody but then the Personal Assistant of the Deputy Commissioner demanded an amount of Rs.5 lakhs and finalized the same and also he replied that if he say 'Yes' to pay an amount of Rs.5 lakhs, he would get the order by tomorrow itself hence, these are the conversations between accused No.1 i.e., this petitioner and the complainant and immediately after the trap, the concerned file was also seized wherein an order was ready but the Deputy Commissioner has not signed the same and hence, it is apparent that unless the bribe amount is received, he is not ready to sign the order. Immediately after apprehending accused Nos.1 and 2, the statement of accused No.1 also recorded wherein he says that the person who has received the amount of Rs.5 lakhs that too in the office of Deputy Commissioner categorically stated that accused No.2 is working in the Appeal Section and the counsel for the State submits that he is not an employee in the Deputy Commissioner's office but the Personal Assistant of the Deputy Commissioner makes the statement that he is working in Appeal Section and whether he is working under contract basis or a regular employee has not been stated but he categorically states that he is working in

the Appeal Section. Accused No.2 who has received an amount of Rs.5 lakhs from the complainant in the office of Deputy Commissioner says that accused No.1 i.e., the Personal Assistant of the Deputy Commissioner instructed him to collect the amount of Rs.5 lakhs from the complainant, for that, no answer from the ACB as well as the State whether a third person who is not working in the office of the Deputy Commissioner can collect the amount and though submits that accused Nos.1 and 2 are working in the Deputy Commissioner's office, the order of appointing accused No.2 has not been placed before the Court inspite of the same was called for. When this Court observed all these materials and brought to the notice of ACB's counsel, thereafter ACB arraigned the Deputy Commissioner as accused No.3 and only a notice was given under Section 41A of Cr.P.C., even though the offence is cognizable and based on that notice, facilitated the Deputy Commissioner to approach this Court by filing a criminal petition for quashing the notice issued under Section 41A of Cr.P.C and the same was dismissed. When accused No.3-Deputy Commissioner approached this Court by filing a petition for quashing, this Court declined to pass any order preventing in taking coercive step, then only accused No.3 has been arrested by ACB. Now the Special counsel appearing for ACB submits that after the arrest also they conducted the raid on the house of the Deputy Commissioner and the investigation is under progress but not placed the material before the Court. 4. Having taken note of the conduct of ACB in not registering the case against the Deputy Commissioner even though there was an ample materials

before ACB, this Court has observed that ACB has registered the case only against the clerk and also the sub-ordinate officials of the Deputy Commissioner's office. The counsel appearing for ACB, instead of assisting the Court made the submission that this Court has to consider only the bail petition and not to consider the other materials. Hence, this Court has expressed that if the Investigating Agency failed to consider the public interest which is sole consideration, the Constitutional Court will monitor the investigation only when circumstances compel to do so. 5. The Apex Court in the judgment reported in AIR 2014 SC 666 in the case of MANOHAR LAL SHARMA vs PRINCIPAL SECRETARY AND OTHERS in paragraph 68 held that if the Court notices that if the investigation is not proceeding legally, Court can take note of the public interest as the sole consideration and a Constitutional Court monitors an investigation only when circumstances compel it to do so, such (illustratively) a lack of enthusiasm by the Investigating Officer or agency (due to 'pressures' on it) in conducting a proper investigation, or a lack of enthusiasm by the concerned Government in assisting the investigating authority to arrive at the truth, or a lack of interest by the investigating authority or the concerned Government to take the investigation to its logical conclusion for whatever reason, or in extreme cases, to hinder the investigation.

6. The Apex Court in the judgment reported in (2010) 1 SCC (CRI) 36 in the case of KEDAR NARAYAN PARIDA AND OTHERS vs STATE OF ORISSA AND ANOTHER held that no interference is called for with the impugned order of the High Court. The High Courts in exercise of their inherent and

plenary powers are entitled to intervene to set right the illegality and/or mala fide action on the part of the investigating authorities when it notices such illegality and/or mala fide action on the part of the investigating authorities. While the courts should not intervene in matters of investigation, which power, under the scheme of Cr.P.C has been vested in the police authorities, an exception has also been made that in certain circumstances the court could intervene in order to do justice to the parties. The courts and in particular the High Courts, are the guardians of the life and liberty of the citizens and if there is any flavour of deliberate misuse of the authority vested in the investigating authority, the High Court or the Supreme Court may certainly step in to correct such injustice or failure of justice. 7. The Apex Court also in the judgment reported in AIR 2010 SC 1476 in the case of STATE OF WEST BENGAL AND OTHERS vs COMMITTEE FOR PROTECTION OF DEMOCRATIC RIGHTS, WEST BENGAL AND OTHERS in Constitutional Bench even considered the scope and ambit of the powers of the High Court wherein it is held that whereas the right guaranteed by Article 32 can be exercised only for the enforcement of fundamental rights conferred by Part III of the Constitution, the right conferred by Article 226 can be exercised not only for the enforcement of fundamental rights, but “for any other purpose” as well, i.e., for enforcement of any legal right conferred by a Statute and the same is discussed in paragraph 35 and also observed with regard to the investigation of cognizable offence, offence committed in territory of State, direction to CBI to investigate, can be given by writ court even in absence of consent of

State, direction not incompatible with federal structure or doctrine of separation of powers, such power to be exercised sparingly, cautiously and in extraordinary situations. 8. Having considered the principles laid down in the judgments referred supra and also considering the factual aspects of the case which has been referred supra wherein in FIR, the specific allegation is made against the Deputy Commissioner that when the complainant met him, he instructed to meet his Personal Assistant and when the complainant met the Personal Assistant of the Deputy Commissioner, he demanded an amount of Rs.15 lakhs to pass an order in favour of the complainant by the Deputy Commissioner and the same has been bargained for Rs.8 lakhs, Rs.5 lakhs and when the complainant agreed to pay a sum of Rs.3 lakhs, insisted him to pay an amount of Rs.5 lakhs and accordingly, the amount is accepted to pass an order in favour of the complainant. According to the State and ACB, the person who has received the money is not an employee in the Deputy Commissioner's office and this Court already pointed out that the very same Personal Assistant of the Deputy Commissioner says that the person who has received the amount is working in the Appeal Section and also accused No.2 who has received the amount in his statement says that as per the instructions of accused No.1 i.e., the Personal Assistant of the Deputy Commissioner, he has collected the amount. When all these materials available on record, ACB has not taken any action and expressed its inability to take action against the Deputy Commissioner and hence, this Court made an observation that the Additional Director General of Police (ADGP) is not working for

the institution for which he has been appointed that too prevention of corruption for which the said institution is established and hence, summoned and directed to place the documents of search warrants which have been taken and which have not been executed and also the B-reports are filed even accused persons are trapped while accepting the bribe amount and they have been let off. The ADGP who is representing the institution and who is in helm of affairs of ACB not exercised his powers legally and not shown any enthusiasm to protect the institution as observed by the Apex Court in the judgments referred supra and without any other alternative, this Court in the interest of general public since general public are facing difficulties in the Government departments to get the work done from the below rank to the top rank without bribe and hence, this Court in the interest of public which is the sole consideration and the Court can monitor the investigation only when the circumstances compel to do so and it is compelled to do by this Court and the Apex Court in the case of MANOHAR LAL SHARMA held that monitoring by the Court does not mean supervision by the Court and categorically held that when the public interest is the sole consideration and a constitutional court monitors an investigation only when circumstances compel it to do so, such (illustratively) a lack of enthusiasm by the Investigating Officer or agency (due to 'pressures' on it) in conducting a proper investigation, or a lack of enthusiasm by the concerned Government in assisting the investigating authority to arrive at the truth, or a lack of interest by the investigating authority or the concerned Government to take the



investigation to its logical conclusion for whatever reason, or in extreme cases, to hinder the investigation. 9. When such being the case, in order to prevent the corruption in the society having considered the very object of the Special Enactment which was brought into force i.e., the Special Enactment of Prevention Of Corruption Act, 1988 and periodically amendment was also made with regard to taking, acceptance as well as acquiring disproportionate properties but the ADGP fails to consider the societal and public interest and hence, this Court directed to summon the documents of B-report which is filed against accused persons who have accepted the bribe amount and trapped at the time of accepting the bribe amount and in disproportionate cases, search warrants which have not been executed. 10. When this Court was passing an order on judicial side, the Special counsel appearing for ACB intervened in the middle of passing an order and he undertaken to place all materials before the Court in this regard but on the next date of hearing, he did not come forward to place the same before the Court even though undertaken to produce, inspite of that he made an attempt to conceal all the papers and at that juncture, the learned Advocate General appeared before the Court and made the submission that all the material will be placed before this Court without fail and given instructions to ACB to place the same and the said submission can be placed on record. Hence, the said submission has been recorded and the matter was adjourned to today. 11. Now ACB has produced the statistics from 2016 to 29.06.2022 without authentication and when this Court insisted, authenticated the same and placed before the Court wherein

in 99 cases B-reports are filed and in column No.2021 and 2022 only given the details of B-reports of two in number pertaining to the year 2021 and for the year 2022, given the details of zero and the same is not the true statement which placed before the Court because in respect of Bengaluru city itself B-reports are filed in Cr.No.28/2016 for the offence under Section 13(1)(e) r/w Section 13(2) of PC Act, B-report was filed on 04.06.2022 and notice was given to the complainant and in Cr.No.12/2019 offence under Section 7(a) (A), 12 of PC ACT, accused was red handedly caught while accepting the bribe amount, B-report was given on 03.09.2020 and for objections to B-report is posted on 21.07.2022 and in the earlier case also, for objections to B-report, posted on 12.07.2022 and in case of Cr.No.17/2016 offence under Section 7 of PC ACT, B-report was given on 18.03.2022 and final report is accepted on 06.05.2022 and in case of Cr.No.1/2017 offence under Section 7, 13(1)(d) r/w Section 13(2) of PC ACT, B-report was given on 26.04.2022 and final report is accepted on 25.05.2022 and these are the materials though pertaining to the years of 2020 to 2022 no details are given pertaining to the B-report filed in the year 2022 and the same is shown as zero and hence, the very report given by ACB before the Court is not the true report and in respect of 2021 also. Hence, it is appropriate to call for B-report filed by ACB from the respective Courts and these are the glaring examples of how ACB is working and not furnishing even the true report and in two occasions though given an undertaking before the Court, not come up with the fair report. 12. The Registrar (Judicial) is directed to get the details of B-

report filed by the ACB from 2016 to till date, the details of Crime Number, offences, date of filing of B-report and whether accepted or pending from the respective Courts of each district. 13. The Special counsel for ACB would submits that year wise chart is prepared and this Court directed to produce B-report from the year 2016 till date and the same has not been produced and the details given is incomplete. Hence, the submission of the counsel for ACB is not accepted. The Special counsel for ACB also filed 105 B-reports before the Court. With regard to the search warrants issued, the counsel submits that almost all search warrants are executed except 28, for the reasons mentioned in the report and the same is also placed on record. 14. The Deputy Secretary to DPAR placed the material in connection with the investigation of the illegal mining case, searches were conducted on 05.04.2013 on the residential premises of Sri Seemanth Kumar Singh, IPS, (ADGP, ACB) (in RC 15(A)/2012) who was the Superintendent of Police at Bellary during the relevant period of allegation under investigation. The documents related to movable and immovable assets seized during the searches were returned to him on 29.12.2015 as per the Court order dated 10.12.2015. In the self content note in RC.16(A)/2012, during the enquiry, it is emerged that the ADGP, the then SP, Bellary district was taking monthly mamuls from iron ore traders and transporters through their subordinates and further states that he had received Rs.3 lakhs from Sri Swastik Nagaraj. Sri Basavaraj, ASI and Sri Devendrappa, SI of the Bellary city were collecting money for SP during 2009-10. In this connection, Sri C Suresh had also given

his statement under Section 164(5) of Cr.P.C. before the Court. 15. In the above case also an observation is made that investigation was not carried out in depth in respect of the involvement of the officers of various departments of the Government of Karnataka and therefore, requested to recommend for investigation and necessary action, as deemed fit against the officers of various departments of Government of Karnataka posted at Bellary district during the period from 01.01.2009 to 31.05.2010 at your end and necessary action may kindly be taken against those who failed to act against illegal mining and transportation as deemed fit. The action taken in this matter may pleased be intimated to the office at the earliest. 16. In view of placing of all these materials before the Court by the Deputy Secretary to DPAR, the counsel appearing for CBI is directed to place the report in respect of the investigation pertaining to ADGP in the aforesaid cases on the next date of hearing failing which, the SP of CBI is directed to be present before the Court personally. 17. Office is directed to furnish a copy of this order to Sri P.Prasanna Kumar, the learned standing counsel appearing for CBI forthwith, who is present before the Court. 18. The Registrar (Judicial) is directed to get the details of B-report filed by ACB from the concerned Courts of the State as observed above. 19. The learned counsel for ACB is directed to place the investigation material collected till date in respect of this crime by the next date of hearing. List the matter on 11.07.2022 at 2.30 p.m.