

IN THE HIGH COURT AT CALCUTTA
[CIRCUIT BENCH AT PORT BLAIR]

...
CRM (DB)/1/2023

Jitendra Narain

Versus

**The State (Union Territory of the Andaman and Nicobar
Islands)**

Mr. Deep Chaim Kabir
Mr. S.Ajith Prasad ... for the petitioner

Mr. Sumit Karmakar ... for the State

Mr. P.C.Das
Mr. Arul Prasanth ... for the Defacto Complainant

February 20, 2023
[SR]
Item No.2

Heard Mr. Deep Chaim Kabir and Mr. S. Ajith Prasad, learned counsel for the petitioner, Mr. Sumit Karmakar, learned counsel for the State, Mr. P.C.Das & Mr. Arul Prasanth, learned counsel for the victim.

The petitioner is implicated in offence(s) punishable under Sections 376 (C), 376 (D), 201, 506, 120 (B) IPC along with three others.

The charge sheet has already been filed in the meantime and two of the co-accused persons have been discharged in the charge-sheet.

The petitioner is the Ex-Chief Secretary of these Islands and he is stated to be a very influential person, who in course of the investigation is alleged to have destroyed the evidence, which were against him, though by that time, he had already been transferred.

Learned counsel for the petitioner submits that the occurrence is alleged to have happened, while the petitioner

was serving as Chief Secretary here. He alongwith co-accused persons is alleged to have enjoyed the victim girl sexually, who had gone to him begging for a job. The FIR was filed after lapse of about seven months, after the petitioner was transferred from here and he was posted at Delhi after being transferred from here. Now he is under suspension after being taken to custody in the present case. Petitioner is stated to be in custody for about 110 days or more.

It is further submitted by Mr. Kabir, learned counsel for the petitioner that the petitioner was extended transit bail (interim) protection by Hon'ble Delhi High Court and also was granted interim protection by Principal Bench, High Court at Calcutta during investigation. The order passed by Hon'ble Calcutta High Court was taken before Hon'ble Supreme Court. In obedience to order passed by Hon'ble Supreme Court, the petitioner moved the Sessions Judge, Andaman and Nicobar Islands for bail. His petition for bail was rejected and he was taken to custody. There is however, no allegation to the effect that in the interregnum, the petitioner had ever violated the condition or sanctity of interim protection extended to him.

Considered the materials placed by Mr. Sumit Karmakar, learned Public Prosecutor appearing for the State.

It is settled position of law that to find out the *prima facie* case at the stage of granting bail, neither anything is to be added to the facts revealed from the police papers nor anything be subtracted therefrom. Keeping in mind the aforesaid principle of law when we look at the papers, we find

prima facie case against the petitioner, though there is allegation of shifting of dates of occurrence by the I.O. and some serious allegation regarding discrepancies/contradictions in the statements of the witnesses, some facts constituting defense case including plea of alibi by the petitioner etc. and biasness in the investigation actuated by concerted effort of some interested groups, after the petitioner left the island on transfer.

We do not want to discuss all these materials in detail because that may influence the trial and merit of the case and it has also potency to prejudice the accused and in some manner to the prosecution also. It is all that, we are satisfied about existence of a *prima facie* case as against the petitioner as found by us on the basis of police papers.

Having heard learned counsel for the parties on the question of *prima facie* case, we are one in our view with the learned Public Prosecutor, and learned counsel for the victim girl that the offence is grave and it attracts stringent punishment (of course, if proved). That question, we leave to be decided in the trial.

It is not the law that on finding of a *prima facie* case of involvement of an accused in a grave offence attracting severe punishment, the bail sought for, should be rejected and the accused should be left to be incarcerated in complete derogation of his fundamental or basic right of liberty. Bail may not be sought for as a matter of right but bail is the rule on satisfaction of other necessary requirements, we propose to discuss below.

So far as the character, behaviour, means, position and standing of the accused is concerned, he is an I.A.S officer and he has already been transferred from here. Some of the witnesses having been declared to be protected as submitted by learned counsel for the State, and this being a Islands, if some stringent conditions are put, we are of the view that the petitioner shall not be in a position to influence any of the witnesses in these Islands.

This case being a first case in the life of the petitioner and he being not a history-sheeter, there is no likelihood of the offence being repeated by him. The petitioner being an officer of the Union of India and he being still in service there is also no chance of his absconding. We do not find materials to satisfy us that release of the petitioner on bail shall be a liberty to the petitioner to influence the witnesses or there is any danger of justice being thwarted by such order being passed.

Regarding being had to the aforesaid facts and submissions, factum of permanent residence of the petitioner and fact that he is a government servant, filing of charge sheet in the meantime and non-necessity of custodial interrogation of the petitioner any further, we are of the view that the petitioner shall be released on bail on such terms and conditions deemed just and proper, by learned Chief Judicial Magistrate, Port Blair in GR 658/2022 in the facts and circumstances of the case, including the following conditions:

- 1) The petitioner shall not visit the Andaman & Nicobar Islands except for the purpose of attending the trial on proper receipt of notice from the Trial Court.
- 2) He shall not keep any contact with any person or official of these Islands by Phone or by any other mode of communication during the currency of this order.
- 3) He shall not threaten, induce or coerce any witness of the case in any manner, whatsoever, during the currency of this order by any means of communication.
- 4) He shall not leave the Union of India except on the permission by the competent authority of the Union of India on urgent official work.
- 5) The petitioner through his counsel shall submit his Passport before the Trial Court during the currency of the trial and in case of his official visit to outside, the Passport can be handed over to him by the Trial Court on proper application, being filed to that effect.

The application of bail is accordingly allowed.

(Chitta Ranjan Dash, J.)

(Md. Nizamuddin , J.)