

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

Criminal Appeal No 121 of 2022

(Arising out of SLP(CrI) No 9463 of 2021)

Md Enamul Haque

.... Appellant(s)

Versus

Central Bureau of Investigation

....Respondent(s)

O R D E R

1 Leave granted.

2 This appeal arises from a judgment and order dated 11 November 2021 by which a Division Bench of the High Court at Calcutta rejected an application for bail under Section 439 of the Code of Criminal Procedure 1973¹.

3 On 31 January 2018, RC 1(A)/2018/CBI/ACB/COCHIN was registered by the Central Bureau of Investigation in Kochi. The allegation is that the then Commandant of the 83 Battalion of the BSF in Roshanbagh, Murshidabad, West Bengal accepted illegal gratification for rendering favours to smugglers of cattle across the Indo-Bangladesh border, resulting in a seizure of Rs 45.30 lakhs in currency notes when the Commandant disembarked at Alleppey Railway Station. On custodial interrogation, the Commandant revealed that he received illegal gratification from the appellant. Subsequently, the appellant was arraigned in

1 “CrPC”

the case. On 4 March 2018, the appellant was arrested in Kolkata in connection to the case which was registered at Kochi. He was produced before the Special Judge at Thiruvananthapuram on 7 March 2018. He was denied bail on 21 March 2018 by the Special Judge, CBI Courts at Thiruvananthapuram on the ground that the appellant is a politically and financially influential person, who if released would likely tamper with the evidence and influence the witnesses. Subsequently, he was granted default bail on 7 May 2018.

- 4 In the meantime, on 6 April 2018, the CBI (ACB) registered a preliminary enquiry against another Commandant of the 36th Battalion of BSF. The allegation is that the cattle were to be sent from India to Bangladesh in large numbers upon the payment of illegal gratification to BSF personnel. It has been alleged that though between December 2015 and April 2017, there was a seizure of cattle, immediately thereafter, auctions were held and a syndicate of traders, including the appellant or his nominees, procured them at a low price. It has been alleged that in view of the favours rendered to him, the appellant was paying bribes to BSF and Customs officials. It has been alleged that an amount of Rs 12.80 crores representing the payment of bribes to the Commandant of the 36th Battalion of BSF came to be deposited in a joint account.
- 5 On 21 September 2020, a case was registered against the appellant for offences punishable under Sections 7, 11 and 12 of the Prevention of Corruption Act 1988 and Section 120B of the Indian Penal Code 1860². It may be noted at this stage that in the proceedings arising out of the case at Kochi, the appellant was permitted to travel to the UAE and, thereafter, to other countries, by orders dated 18 July 2019 and 4 September 2019.

6 In the meantime, the appellant received notices under Section 41A of the CrPC on 28 September 2020 and 16 October 2020. The appellant was placed under arrest on 6 November 2020. On 21 December 2020, the Special Judge (CBI) Court, Asansol enlarged the Commandant of the 36th Battalion of BSF on bail. A charge-sheet has been submitted by the CBI on 6 February 2021 and has been followed by a supplementary charge-sheet on 23 February 2021.

7 On 20 July 2021, the application for bail was dismissed by the Special Judge (CBI) Court, Asansol on the ground that the appellant is an influential person and the alleged master-mind of the conspiracy. By the impugned order of the High Court, the application for bail has been dismissed by the Division Bench on the following grounds:

- (i) The statements of witnesses recorded under Sections 161/164 CrPC and the available material, *prima facie* show that the appellant formed an organized syndicate for cattle smuggling through the Indo-Bangladesh international border
- (ii) The allegation is that BSF personnel seized the cattle from the person trying to smuggle cattle to Bangladesh and sent it to Customs. However, no person other than the appellant and his men were allowed to participate in the auction. The BSF officials would allegedly manipulate the breed, category and number of cattle in the seizure memo. The BSF officials would then allow the appellant to smuggle cattle to Bangladesh through the Indo-Bangladesh Border;
- (iii) The appellant is the alleged master mind behind the conspiracy. He deposited Rs. 12.80 Crores in the joint account of the wife and father-in-law of the then Commandant of the 36th Battalion of BSF; and

(iv) The appellant is an accused in another similar case registered in Kerala. He does not stand on the same footing as the other accused since he is the 'kingpin'.

8 Mr Mukul Rohatgi, senior counsel appearing on behalf of the appellant, submitted that:

(i) The appellant has been in custody since 6 November 2020 and the submission of the charge-sheet and the supplementary charge-sheet, after investigation, renders his continued detention in custody unnecessary;

(ii) All the other accused, save and except for the appellant, have been enlarged on bail and bail has been granted to the Commandant of BSF, who is alleged to have accepted the bribe;

(iii) All the offences for which the appellant has been charged are subject to a maximum sentence of seven years; and

(iv) There is a wider issue involved in regard to the jurisdiction of the CBI to investigate the offences upon the withdrawal of consent by the State of West Bengal.

9 Mr Aman Lekhi, Additional Solicitor General appearing on behalf of the CBI, has supported the judgment of the High Court. He has submitted that:

(i) The prior involvement of the appellant in the case at Kochi would indicate that he is habituated to commit similar offences arising out of smuggling of cattle across the Indo-Bangladesh border;

(ii) There are serious allegations against the appellant of having exploited the conditions prevalent at a porous border and, therefore, implicate national

security concerns;

- (iii) Though the appellant was permitted to travel abroad under the conditions imposed by the competent Court at Thiruvananthapuram while granting bail, the appellant evaded the look-out circular which was issued against him and entered India through land frontier through West Bengal, in collusion with the law enforcement authorities;
 - (iv) The investigation is still pending, involving the complicity with the officials of the BSF rendering it inappropriate to grant bail to the appellant;
 - (v) The High Court has for justifiable reasons declined to grant bail on the basis of parity having regard to the fact that the appellant was the main perpetrator at whose behest the conspiracy was hatched and bribes have been paid; and
 - (vi) There is no perversity in the order of the High Court which is based on the conduct of the appellant; the allegations involved and the absence of parity.
- 10 Having heard the rival submissions, we are of the considered opinion that the continued detention of the appellant in custody is not warranted in the facts of the present case. The appellant was granted default bail by the Special Judge, CBI Court at Thiruvananthapuram on 7 May 2018. In the regular case out of which the present appeal arises, the appellant was arrested and has been in custody since 6 November 2020. The charge-sheet has been submitted on 6 February 2021 and a supplementary charge-sheet has been submitted on 23 February 2021. Apart from a vague assertion that the investigation is in progress, no basis has been indicated why even after a lapse of over a year, the continued custody of the appellant is required. Having due regard to the fact

that the charge sheet and a supplementary charge sheet have been filed, the nature of the alleged offence and the maximum sentence, the continued detention of the appellant who has suffered custody for a year and two months is not warranted.

- 11 In the circumstances, we order and direct that the appellant shall be released on bail, subject to such terms and conditions as may be imposed by the Special Judge (CBI) Court, Asansol, Paschim Bardhaman in connection with Special Case No 01 of 2021, CNR No. WBBDIS-002216-2020.
- 12 The appeal is accordingly disposed of.
- 13 Pending application, if any, stands disposed of.

.....J.
[Dr Dhananjaya Y Chandrachud]

.....J.
[Dinesh Maheshwari]

**New Delhi;
January 24, 2022**

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**UPON hearing the counsel the Court made the following
O R D E R**

- 1 In terms of the signed reportable order, we order and direct that the appellant shall be released on bail, subject to such terms and conditions as may be imposed by the Special Judge (CBI) Court, Asansol, Paschim Bardhaman in connection with Special Case No 01 of 2021, CNR No. WBBDIS-002216-2020.
- 2 The appeal is disposed of.
- 3 Pending application, if any, stands disposed of.

**(SANJAY KUMAR-I)
AR-CUM-PS**

**(SAROJ KUMARI GAUR)
COURT MASTER**

(Signed order is placed on the file)