

relying on this very material circumstance that none of the respondents, though armed, fired a single bullet.

18. Shri Pradhan then claimed that if after reading the evidence if some material is found against some others, then the complainant should have the liberty to apply for action under Section 319 Cr.P.C. It would be speculative on our part to say anything on this matter. It will be for the Trial Court to consider any such application, if made, on its own merit. There will be no question of giving liberty for that purpose. No other points were argued.

19. Under the circumstances, we do not find any merit in this appeal and proceed to dismiss the same. The appeal is dismissed.

Result: -

The appeal is dismissed.

ABC 2012 (I) 72 SC
ACQUITTAL CASES REPORTER
SUPREME COURT OF INDIA

(G.S. Singhvi, & H.L. Dattu, JJ.)
Criminal Appeal No.2178 of 2011
(Arising out of SLP (Crl.) No. 5650 of 2011)
(From Jharkhand High Court)
Decided on 23 November, 2011

SANJAY CHANDRA

- Appellant(s).

Versus

CENTRAL BUREAU OF INVESTIGATION

- Respondent(s).

With

Criminal Appeal No.2179 of 2011
(Arising out of SLP (Crl.) No. 5902 of 2011)

VINOD GOENKA

- Appellant(s).

Versus

CENTRAL BUREAU OF INVESTIGATION

- Respondent(s).

With

Criminal Appeal No.2180 of 2011

ABC 2012(I) *Sanjay Chandra & Ors Vs. Central Bureau of Investigation (SC)* **73**

(Arising out of SLP (Crl.) No. 6190 of 2011)

GAUTAM DOSHI . - *Appellant(s).*

a *Versus*

CENTRAL BUREAU OF INVESTIGATION - *Respondent(s).*

With

Criminal Appeal No.2181 of 2011
(Arising out of SLP (Crl.) No. 6288 of 2011)

b **HARI NAIR** - *Appellant(s).*

Versus

CENTRAL BUREAU OF INVESTIGATION - *Respondent*
(s).

With

Criminal Appeal No.2182 of 2011
(Arising out of SLP (Crl.) No. 6315 of 2011)

c **SURENDRA PIPARA** - *Appellant(s)*

Versus

CENTRAL BUREAU OF INVESTIGATION. - *Respondent(s)*

d **Law Covered:-**

(A) CrPC – S 87, 88, 437 & 439 – Bail – economic offences of huge magnitude – investigation completed – charge sheet filed – presence in the custody – may not be necessary for further investigation – Bail granted. (Para 28)

e (B) CrPC – S 87, 88, 437 & 439 – Bail – Investigation Completed – Charge-sheet filed – The trial may take considerable time – the accused have to remain in jail longer than the period of detention, had they been convicted – Not in the interest of justice that accused should be in jail for an indefinite period – Seriousness of the offence – huge loss to the State exchequer – by itself, should not deter the Court from enlarging the appellants on bail – no serious contention – that the accused, if released
f on bail, would interfere with the trial or tamper with evidence – No good reason to detain the accused in custody. (Para 26)

g (C) CrPC – S 87, 88, 437 & 439 – IPC – Ss 420, 468, 471 & 109 – PCA – S 13 (2) r/w 13 (i)(d) – Bail – Criminal conspiracy – Cheating – Forgery – using false document as genuine – Charge-sheet filed – accused
h summoned by the Court – commencement of trial – Grounds of refusing bail by the Court below – (i) seriousness of the charge (ii) the nature of the evidence in support of the charge (iii) the likely sentence to be imposed upon conviction (iv) the possibility of interference with witnesses (v) the objection of the prosecuting authorities (vi) possibility of absconding from justice – Held, the view adopted by the Courts below is – a denial of the whole basis
h of our system of law and normal rule of bail system – a man shall be considered innocent until he is found guilty – If such power of denial is

recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual – Bail granted. (Para 13 & 15)

(D) CrPC – S 87, 88, 437 & 439 – Bail – Object of – is neither punitive nor preventative – Deprivation of liberty – must be considered a punishment – unless it can be required to ensure that an accused person will stand his trial when called upon – The courts owe more than verbal respect to the principle that punishment begins after conviction – and every man is deemed to be innocent until duly tried and duly found guilty – detention in custody – pending completion of trial – could be a cause of great hardship – Refusal of bail – Object of – any imprisonment before conviction has a substantial punitive content – it would be improper for any Court to refuse bail as a mark of disapproval of former conduct – whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson. (Para 14)

(E) CrPC – S 87, 88, 437 & 439 – Bail – Constitutional rights – Discretion of the Court – Possibility of the appellants tampering witnesses – No material in support of the allegation – Seriousness of the charge – is not the only test or the factor – the factor of punishment that could be imposed requires to be taken care of – Held, if seriousness of the charge is the only test – the Court would not be balancing the Constitutional Rights – but rather ‘recalibration of the scales of justice’ – The provisions of Cr.P.C. confer – discretionary jurisdiction on Criminal Courts – to grant bail to accused pending trial or in appeal against convictions – since the jurisdiction is discretionary – it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. (Para 15)

(F) Constitution – Article 21 – Personal liberty – Bail – is the rule and – committal to jail – an exception – refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution. (Para 16)

(G) CrPC – S 87, 88, 437 & 439 – Bail – Bad record – and police prediction – of criminal prospects to invalidate the bail plea are admissible in principle – but shall not stampede the Court into a complacent refusal. (Para 19)

(H) CrPC – S 87, 88, 437 & 439 – Bail – Delay in trial – bail should be granted to the accused. (Para 22)

(I) CrPC – S 87, 88, 437 & 439 – Bail – discretion of the Court – The grant or denial is regulated by the facts and circumstances – right to bail is not to be denied merely because of the sentiments of the community against the accused – Purposes of bail – to relieve the accused of imprisonment – to relieve the State of the burden of keeping him – to keep the accused constructively in the custody of the Court – to assure his presence. (Para 25)

(J) Constitution – Article 21 – Personal liberty – Speedy trial – Every person, detained or arrested, is entitled to speedy trial – When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. (Para 26)

Facts:-

In the case of spectrum allocation it was alleged that the present accused persons entered in to a criminal conspiracy with the accused A. Raja and other accused persons to get UAS license for providing telecom service to otherwise an ineligible company. For this purpose, in the furtherance of common intention, they created false documents and companies. They used the said false documents as genuine, thereby cheated and dishonestly induced delivery of property. It was further alleged that huge financial loss was caused to the State exchequer.

The accused persons cooperated in the investigation, charge-sheet was filed before the CBI Court and the accused were summoned by the Court. The Courts below rejected the Bail applications of the appellants observing the seriousness of the charge, the nature of the evidence in support of the charge; the likely sentence to be imposed upon conviction; the possibility of interference with witnesses; the objection of the prosecuting authorities; possibility of absconding from justice. Aggrieved appellants filed the present appeal. Looking in to the principles of granting bail and liberty of individual and other circumstances like punishment and delay in trial and considering the case of *Siddharam Satlingappa Mhetre v. State of Maharashtra* (reported in ABC 2011(I) 204 SC) the Supreme Court allowed the appeal.

Law of relief:

- (i) The accused should not be in jail for an indefinite period.
- (ii) If power of denial of bail by the court is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual.
- (iii) Object of bail is neither punitive nor preventative.
- (iv) Seriousness of the charge is not the only test or the factor while considering bail, the factor of punishment that could be imposed requires to be taken care of.
- (v) Refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution.
- (vi) In case of delay in trial, bail should be granted to the accused.

Held:-

In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor preventative. Deprivation of liberty must be considered a punishment,

unless it can be required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. Apart from the question of prevention being the object of a refusal of bail, one must not lose sight of the fact that any imprisonment before conviction has a substantial punitive content and it would be improper for any Court to refuse bail as a mark of disapproval of former conduct whether the accused has been convicted for it or not or to refuse bail to an un-convicted person for the purpose of giving him a taste of imprisonment as a lesson. (Para 14)

Though, they contend that there is possibility of the appellants tampering witnesses, they have not placed any material in support of the allegation. In our view, seriousness of the charge is, no doubt, one of the relevant considerations while considering bail applications but that is not the only test or the factor : The other factor that also requires to be taken note of is the punishment that could be imposed after trial and conviction, both under the Indian Penal Code and Prevention of Corruption Act. Otherwise, if the former is the only test, we would not be balancing the Constitutional Rights but rather 'recalibration of the scales of justice.' The provisions of Cr.P.C. confer discretionary jurisdiction on Criminal Courts to grant bail to accused pending trial or in appeal against convictions, since the jurisdiction is discretionary, it has to be exercised with great care and caution by balancing valuable right of liberty of an individual and the interest of the society in general. In our view, the reasoning adopted by the learned District Judge, which is affirmed by the High Court, in our opinion, a denial of the whole basis of our system of law and normal rule of bail system. It transcends respect for the requirement that a man shall be considered innocent until he is found guilty. If such power is recognized, then it may lead to chaotic situation and would jeopardize the personal liberty of an individual. (Para 15)

This Court, time and again, has stated that bail is the rule and committal to jail an exception. It is also observed that refusal of bail is a restriction on the personal liberty of the individual guaranteed under Article 21 of the Constitution. (Para 16)

This Court has taken the view that when there is a delay in the trial, bail should be granted to the accused [See *Babba v. State of Maharashtra*, (2005) 11 SCC 569, *Vivek Kumar v. State of U.P.*, (2000) 9 SCC 443, *Mahesh Kumar Bhawsinghka v. State of Delhi*, (2000) 9 SCC 383]. (Para 22)

It is, no doubt, true that the nature of the charge may be relevant, but at the same time, the punishment to which the party may be liable, if convicted, also bears upon the issue. Therefore, in determining whether to

grant bail, both the seriousness of the charge and the severity of the punishment should be taken into consideration. The grant or refusal to grant

a bail lies within the discretion of the Court. The grant or denial is regulated, to a large extent, by the facts and circumstances of each particular case. But at the same time, right to bail is not to be denied merely because of the sentiments of the community against the accused. The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve

b the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the Court, whether before or after conviction, to assure that he will submit to the jurisdiction of the Court and be in attendance thereon whenever his presence is required. This Court in *Gurcharan Singh and Ors. Vs. State* AIR 1978 SC 179 observed that two paramount considerations, while considering petition for grant of

c bail in non-bailable offence, apart from the seriousness of the offence, are the likelihood of the accused fleeing from justice and his tampering with the prosecution witnesses. Both of them relate to ensure of the fair trial of the case. Though, this aspect is dealt by the High Court in its impugned order, in our view, the same is not convincing. (Para 25)

d When the undertrial prisoners are detained in jail custody to an indefinite period, Article 21 of the Constitution is violated. Every person, detained or arrested, is entitled to speedy trial, the question is : whether the same is possible in the present case. There are seventeen accused persons. Statement of the witnesses runs to several hundred pages and the documents on which reliance is placed by the prosecution, is voluminous. The trial may

e take considerable time and it looks to us that the appellants, who are in jail, have to remain in jail longer than the period of detention, had they been convicted. It is not in the interest of justice that accused should be in jail for an indefinite period. No doubt, the offence alleged against the appellants is a serious one in terms of alleged huge loss to the State exchequer, that, by itself, should not deter us from enlarging the appellants on bail when there is

f no serious contention of the respondent that the accused, if released on bail, would interfere with the trial or tamper with evidence. We do not see any good reason to detain the accused in custody, that too, after the completion of the investigation and filing of the charge-sheet. (Para 26)

g We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the same time, we cannot lose sight of the fact that the investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that

h the appellants are entitled to the grant of bail pending trial on stringent conditions in order to allay the apprehension expressed by CBI. (Para 28)

Counsel :-

For the Appellant(s): Shri. Ram Jethmalani, Shri. Mukul Rohatgi, a
Shri Soli J. Sorabjee and Shri. Ashok H. Desai, learned
senior counsel.

For the Respondent(s): Shri. Harin P. Raval, learned Additional
Solicitor General.

Cases Referred:-

1. Court on its own motion v. CBI', 2004 (I) JCC 308.
2. R vs. Griffiths and Ors., (1966) 1 Q.B. 589.
3. Sharad Kumar Etc. v. Central Bureau of Investigation [in SLP (Crl) No. 4584- 4585 of 2011].
4. Kalyan Chandra Sarkar Vs. Rajesh Ranjan- (2005) 2 SCC 42. c
5. State of Rajasthan v. Balchand, (1977) 4 SCC 308.
6. Gudikanti Narasimhulu v. Public Prosecutor, (1978) 1 SCC 240.
7. Gurcharan Singh v. State (Delhi Admn.), (1978) 1 SCC 118.
8. Babu Singh v. State of U.P., (1978) 1 SCC 579.
9. Moti Ram v. State of M.P., (1978) 4 SCC 47. d
10. Vaman Narain Ghiya v. State of Rajasthan, (2009) 2 SCC 281.
11. Siddharam Satlingappa Mhetre v. State of Maharashtra, (2011) 1 SCC 694 = ABC 2011(I) 204 SC.
12. Babba v. State of Maharashtra, (2005) 11 SCC 569.
13. Vivek Kumar v. State of U.P., (2000) 9 SCC 443.
14. Mahesh Kumar Bhaw Singhka v. State of Delhi, (2000) 9 SCC 383]. e
15. Prahlad Singh Bhati v. NCT, Delhi, (2001) 4 SCC 280.
16. U.P. v. Amarmani Tripathi, (2005) 8 SCC 21.
17. Kalyan Chandra Sarkar v. Rajesh Ranjan: (SCC pp. 535-36, para 11).
18. State of Kerala Vs. Raneef (2011) 1 SCC 784. f

JUDGMENT

H.L. DATTU, J.:- 1. Leave granted in all the Special Leave Petitions.

2. These appeals are directed against the common Judgment and Order of the learned Single Judge of the High Court of Delhi, dated 23rd May 2011 in Bail Application No. 508/2011, Bail Application No. 509/2011 & Crl. M.A. 653/2011, Bail Application No. 510/2011, Bail Application No. 511/2011 and Bail Application No. 512/2011, by which the learned Single Judge refused to grant bail to the accused-appellants. These cases were argued together and submitted for decision as one case. g

3. The offence alleged against each of the accused, as noticed by the h
Ld. Special Judge, CBI, New Delhi, who rejected bail applications of the appellants, vide his order dated 20.4.2011, is extracted for easy reference :

Sanjay Chandra (A7) in Crl. Appeal No. 2178 of 2011 [arising out of SLP (Crl.)No.5650 of 2011]:

a ‘6. The allegations against accused Sanjay Chandra are that he entered into criminal conspiracy with accused A. Raja, R.K. Chandolia and other accused persons during September 2009 to get UAS licence for providing telecom services to otherwise an ineligible company to get UAS licences. He, as Managing Director of M/s

b Unitech Wireless (Tamil Nadu) Limited, was looking after the business of telecom through 8 group companies of Unitech Limited. The first-come-first- served procedure of allocation of UAS Licences and spectrum was manipulated by the accused persons in order to benefit M/s Unitech Group Companies. The cutoff date of 25.09.2007

c was decided by accused public servants of DoT primarily to allow consideration of Unitech group applications for UAS licences. The Unitech Group Companies were in business of realty and even the objects of companies were not changed to `telecom' and registered as required before applying. The companies were ineligible to get the licences till the grant of UAS licences. The Unitech Group was

d almost last within the applicants considered for allocation of UAS licences and as per existing policy of first-come-first-served, no licence could be issued in as many as 10 to 13 circles where sufficient spectrum was not available. The Unitech companies got benefit of spectrum in as many as 10 circles over the other eligible applicants. Accused Sanjay Chandra, in conspiracy with accused public

e servants, was aware of the whole design of the allocation of LOIs and on behalf of the Unitech group companies was ready with the drafts of Rs. 1658 crores as early as 10th October, 2007.’

Vinod Goenka (A5) in Crl. Appeal No. 2179 of 2011 [arising out of SLP(Crl)No.5902 of 2011] : ‘5. The allegations against accused

f Vinod Goenka are that he was one of the directors of M/s Swan Telecom (P) Limited in addition to accused Shahid Usman Balwa w.e.f. 01.10.2007 and acquired majority stake on 18.10.2007 in M/s Swan Telecom (P) Limited (STPL) through DB Infrastructure (P) Limited. Accused Vinod Goenka carried forward the fraudulent applications of STPL dated 02.03.2007 submitted by previous

g management despite knowing the fact that STPL was ineligible company to get UAS licences by virtue of clause 8 of UASL guidelines 2005. Accused Vinod Goenka was an associate of accused Shahid Usman Balwa to create false documents including Board Minutes of M/s Giraffe Consultancy (P) Limited fraudulently

h showing transfer of its shares by the companies of Reliance ADA Group during February 2007 itself. Accused/applicant in conspiracy with accused Shahid Usman Balwa concealed or furnished false

information to DoT regarding shareholding pattern of STPL as on the date of application thereby making STPL an eligible company to get licence on the date of application, that is, 02.03.2007. Accused/ applicant was an overall beneficiary with accused Shahid Usman Balwa for getting licence and spectrum in 13 telecom circles. a

12. Investigation has also disclosed pursuant to TRAI recommendations dated 28.08.2007 when M/s Reliance Communications Ltd. got the GSM spectrum under the Dual Technology policy, accused Gautam Doshi, Hari Nair and Surendra Pipara transferred the control of M/s Swan Telecom Pvt. Ltd., and said structure of holding companies, to accused Shahid Balwa and Vinod Goenka. In this manner they transferred a company which was otherwise ineligible for grant of UAS license on the date of application, to the said two accused persons belonging to Dynamix Balwa (DB) group and thereby facilitated them to cheat the DoT by getting issued UAS Licences despite the ineligibility on the date of application and till 18.10.2007. b
c

13. Investigation has disclosed that accused Shahid Balwa and Vinod Goenka joined M/s Swan Telecom Pvt. Ltd. and M/s Tiger Traders Pvt. Ltd. as directors on 01.10.2007 and DB group acquired the majority stake in TTPL/ M/s Swan Telecom Pvt. Ltd. (STPL) on 18.10.2007. On 18.10.2007 a fresh equity of 49.90 lakh shares was allotted to M/s DB Infrastructure Pvt. Ltd. Therefore on 01.10.2007, and thereafter, accused Shahid Balwa and Vinod Goenka were in- charge of, and were responsible to, the company M/s Swan Telecom Pvt. Ltd. for the conduct of business. As such on this date, majority shares of the company were held by D.B. Group.' d
e

Gautam Doshi (A9), Surendra Pipara (A10) and Hari Nair (A 11) in Crl. Appeal Nos.2180,2182 & 2181 of 2011 [arising out of SLP (Crl) Nos. 6190,6315 & 6288 of 2011] : f

'7. It is further alleged that in January-February, 2007 accused Gautam Doshi, Surendra Pipara and Hari Nath in furtherance of their common intention to cheat the Department of Telecommunications, structured/created net worth of M/s Swan Telecom Pvt. Ltd., out of funds arranged from M/s Reliance Telecom Ltd. or its associates, for applying to DoT for UAS Licences in 13 circles, where M/s Reliance Telecom Ltd. had no GSM spectrum, in a manner that its associations with M/s Reliance Telecom Ltd. may not be detected, so that DOT could not reject its application on the basis of clause 8 of the UASL Guidelines dated 14.12.2005. g

8. In pursuance of the said common intention of accused persons, they structured the stake-holding of M/s Swan Telecom Pvt. Ltd. in a manner h