

Bail Application No. 4/2022
Nidhi Tiwari vs CBI
in
CBI vs Sushil Ranjan & Ors
RC- 003/2022/A0046
U/s 120B r/w 419/420/467/468/471 IPC

02.09.2022

Present: None.

Vide this order, I shall dispose off an application filed on behalf of applicant/accused **Nidhi Tiwari** seeking grant of bail. Reply to the application is already on record. Copy thereof was supplied to other side on 23.08.2022.

The case of the prosecution as alleged is that on the basis of source information a case 46(A)/2022 was registered u/s 120B r/w 419/420/467/468/471 IPC against eleven accused persons including applicant/accused herein. It is the case of the CBI that accused Sushil Ranjan, Pappu, Uma Shankar Gupta & Ors in conspiracy with each other were involved in arranging paper solvers who would impersonate themselves as real candidates in lieu of huge money, in NEET-UG Exam, 2022 at several exam centers of Delhi/ Haryana. It is also alleged that the user ids and passwords of the candidates appearing for the examination were collected by the accused persons and their associates and necessary changes were made for getting the desired examination centers as planned by them. Photographs of the proxy candidates for appearing in the examination were morphed. It is also the case of the CBI that applicant/accused herein was one of the paper solvers who was about to impersonate in the NEET-UG Exam, 2022 to scheduled to be held on 17.07.2022 at various centers located at Delhi/Haryana and that all the

middleman alongwith their associates had came to Delhi on 16.07.2022/ 17.07.2022. During the investigation accused persons namely Nidhi, Sunny Ranjan, Krishna Shankar Yogi, Raghunandan, Jeepu Lal, Sushil Ranjan, Bharat Singh and Saurabh were arrested on 18.07.2022.

As far as the allegations against the accused/applicant herein Nidhi Tiwari are concerned, it is alleged that she was arrested on 18.07.2022 and that she had appeared in NEET-UG Exam, 2022 at Atal Adarsh Vidyalaya, Havlock Square, New Delhi by impersonating herself as other candidate namely Smriti Rai.

It was submitted by Ld. Counsel for accused/applicant that she had been arrested after appearing in examination as dummy candidate. It was further submitted that applicant/accused is of 25 years of age and pursuing MBBS at Hapur, having no criminal history and is a first time offender and not a hardened criminal. It was also submitted that no money or anything in kind has been recovered from her or at her instance during the police custody remand.

On the other hand, it was submitted by Ld. APP for the CBI that applicant/accused was arrested after she had appeared in place of the other candidate namely Smriti Rai and that aadhar card was recovered and that there are conversations between co-accused Sushil Ranjan and applicant/accused Nidhi Tiwari. It was further submitted that investigation of the case is at initial stage and two accused persons Brij Mohan and Hemant are yet to be arrested, hence, the instant application be dismissed.

In support of his contentions, apart from the judgment referred to in the instant application, Ld. Counsel for accused/applicant has relied upon judgment titled as **Dataram vs State of U.P**, Crl. A No. 227 of 2018

decided by Hon'ble Apex Court on 06.02.2018.

I have considered the rival submissions and have perused the application, reply and FIR.

Applicant/accused herein Nidhi Tiwari is a student of MBBS Course and is in JC since 18.07.2022. With respect to pre trial detention, in **Moti Ram v. State of M.P.** (1978) 4 SCC 47, it was held by the Hon'ble Supreme Court that :

"14. The consequences of pre-trial detention are grave. Defendants presumed innocent are subjected to the psychological and physical deprivations of jail life, usually under more onerous conditions than are imposed on convicted defendants. The jailed defendant loses his job if he has one and is prevented from contributing to the preparation of his defence. Equally important, the burden of his detention frequently falls heavily on the innocent members of his family."

In the case of **Siddharam Satlingappa Mhetre v. State of Maharashtra** (2011) 1 SCC 694, it was observed by Ho'ble Apex Court that :

"116. Personal liberty is a very precious fundamental right and it should be curtailed only when it becomes imperative according to the peculiar facts and circumstances of the case."

In **Satender Kumar Antil vs CBI**, 2022 SCC OnLine SC 825, it has been recently held by Hon'ble Apex Court that :-

"55. xxxxxxxx the jurisdictional Magistrate who otherwise has the jurisdiction to try a criminal case which provides for a maximum punishment of either life or death sentence, has got ample jurisdiction to consider the release on bail".

In **Kalyan Chandra Sarkar v. Rajesh Ranjan** (2005) 2 SCC 42, Hon'ble Apex Court had laid down the principles relating to grant or refusal of bail and held that :

"11. The law in regard to grant or refusal of bail is very well settled. The court granting bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail a detailed examination of evidence and elaborate documentation of the merit of the

case need not be undertaken, there is a need to indicate in such orders reasons for prima facie concluding why bail was being granted particularly where the accused is charged of having committed a serious offence. Any order devoid of such reasons would suffer from non-application of mind". It is also necessary for the court granting bail to consider among other circumstances, the following factors also before granting bail; they are:

- (a) The nature of accusation and the severity of punishment in case of conviction and the nature of supporting evidence.*
- (b) Reasonable apprehension of tampering with the witness or apprehension of threat to the complainant.*
- (c) Prima facie satisfaction of the court in support of the charge.*

In Sanjay Chandra v. CBI, (2012) 1 SCC 40 it was further held by Hon'ble Supreme Court that :

"21. xxxxxxxxxxxx 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".

In Vaman Narayan Ghiya vs State of Rajasthan (2009) 2 SCC 281 it was held by Hon'ble Supreme Court that :

"19. While considering an application for bail, detailed discussion of the evidence and elaborate documentation of the merits is to be avoided. This requirement stems from the desirability that no party should have the impression that his case has been pre-judged. Existence of a prima facie case is only to be considered. Elaborate analysis or exhaustive exploration of the merits is not required. (See Niranjana Singh and Anr. v. Prabhakar Rajram Kharote). Where the offence is of serious nature the question of grant of bail has to be decided keeping in view the nature and seriousness of the offence, character of the evidence and amongst others the larger interest of the public". (See State of Maharashtra v. Anand Chaintaman Dighe and State v. Surendranath Mohanty).

In the present case the FIR was registered on 17.07.2022. Accused/applicant herein was arrested on 18.07.2022 and was remanded to four days police custody remand and thereafter vide order dated 22.07.2022 she was remanded to JC and since then he continues to be in

judicial custody. Till date, no investigation has been conducted from the candidate namely Smriti Rai, which the investigating agency alleges that applicant/accused had impersonated by appearing in NEET-UG Exam, 2022 on 17.07.2022.

In view of the foregoing discussion and law laid down by Hon'ble Superior Courts it is clear that this court has a larger duty towards the cause of justice which warrants that the liberty of the applicant/accused is to be protected while balancing it with the rights of the investigating agency. In the present case applicant/accused is a female and is pursuing MBBS Course, having no criminal antecedents and this is her first involvement. Furthermore, all the evidence are in the custody of the CBI/investigating agency which cannot be tampered by the accused/applicant neither she can hamper with the investigation nor influence the witnesses.

Considering the aforesaid facts and circumstances including period of judicial custody of applicant/accused and also considering that the investigation is complete qua her as nothing is required to be recovered from her or at her instance. Therefore, no purpose would be served by keeping the applicant/accused in judicial custody any further. Accordingly, instant application seeking grant of bail is allowed and applicant/ accused namely **Nidhi Tiwari** is admitted to bail on her furnishing of personal bond in the sum of Rs. 50,000/- with one surety of like amount subject to the conditions that :-

- 1) Applicant/accused shall not indulge in the offence/s of the same nature.
- 2) Applicant/accused shall not influence the witness/s and shall join the investigation as and when directed to do so.
- 3) Applicant/accused shall not hamper with the investigation in any

manner.

4) Applicant/accused shall not leave India without prior permission of this court.

Needless to say, that nothing discussed herein shall tantamount to be an expression of opinion on the merits of the case.

Application stands disposed off.

(DEEPAK KUMAR-II)
ACMM-2 cum ACJ
RACC New Delhi / 02.09.2022