

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL Nos. 935-936 OF 2009
(arising out of SLP (Crl.) Nos. 3393-3394 /2009
@ Crl. MP Nos. 20054-20055/2008)

C.B.I., New Delhi.

.....Appellant

Versus

Abhishek Verma

.....Respondent

JUDGMENT

Dr. Justice Mukundakam Sharma, J.

1. Heard counsel for the parties on the delay application. For the reasons stated in the application, delay stands condoned.
2. Leave granted
3. These appeals arise out of the judgment and order dated 30.05.2008 passed by the High Court of Delhi by which the learned Single Judge granted bail to the respondent herein.
4. Facts in brief as per prosecution are as follows:

In May, 2005 a court of inquiry conducted by the Air Force Headquarters had established that one Wing Commander S.L. Surve had obtained a pen drive containing information pertaining to the Directorate of Naval Operation (DNO) from Kulbhushan Parashar, a former officer of the Indian Navy. A Board of Enquiry was held by the Naval Headquarters and

three Naval Officers namely Kashyap Kumar, Vijender Rana and Vinod Kumar Jha were indicted for causing classified naval information to be leaked to unauthorized persons thus jeopardizing the security of the State. In the said Court of Enquiry it came to light that Kulbhushan Parashar was associated with a company named Atlas.

On the basis of the information received from the Ministry of Defence under two letters dated 18.02.2006 and 01.03.2006, the Central Bureau of Investigation (in short 'the CBI') registered an FIR on 20.3.2006 under Section 120-B of the Indian Penal Code (in short 'the IPC') read with Section 3(1)(c) and Section 5 of the Official Secrets Act, 1923 (in short 'the OSA') against Kulbhushan Parashar, Ex. Cdr. Ravi Shankaran, S.K. Kohli, Mukesh Bajaj, Ms. Rajrani Jaiswal, Sambhajee L. Surve, Virender Rana, Kashyap Kumar and Vijender Kumar Jha. The Chief Metropolitan Magistrate, Delhi passed an order dated 10th July, 2006 taking cognizance of the above-mentioned offences.

After completion of investigation, charge sheets were filed against Kulbhushan Parashar, Ex. Cdr. Vijender Rana, Ex. Cdr., V.K. Jha, Ex. Wg. Cdr., S.L. Surve and Ravi Shankaran (Proclaimed Offender). The investigation revealed that all these accused can be grouped in 3 categories as follows:

GROUP I It consists of the accused who were serving in Indian Navy and Indian Air Force. Accused Vijender Rana, V.K. Jha and S.L. Surve fall in this group.

GROUP II It consists of the accused who have been retired from Indian Navy. Kulbhushan Parashar and Ravi Shankaran (Proclaimed Offender) fall in this group.

GROUP III It consists of the accused who were private persons and have never served Indian Navy or Air Force. The respondent herein (Abhishek Verma) falls in this group.

5. The allegation in the charge sheet was that Kulbhushan Parashar who was earlier working with Ravi Shankaran at Mumbai, started working with the respondent after he moved to Delhi. Kulbhushan Parashar was the Vice President of Atlas Defence System (ADS) and was interacting with the Ministry of Defence for various products including 2 MB PCM MUC multiplexing equipment for simultaneous transmission of subject, telegraph messages and data over point to point communication, Subscriber End Secrecy Device (SESD) and Terrestrial Trunk Radio (TETRA) and Aerostat. It has been stated that the respondent was closely associated with Atlas Group of Companies and also those which existed in India in the name and style of Atlas Interactive (India) Pvt. Ltd. and

M/s. One World Interactive India Pvt. Ltd. which had close links with foreign registered sister concerns M/s. Atlas Defence Systems, Atlas Telecom Pvt. Ltd. U.K. The respondent was on the board of two other companies, viz., Atlas Interactive India Pvt. Ltd. (AI IPL) and One World Interactive India Pvt. Ltd. (OWIPL). Although the bids were made by M/s. Atlas Telecom Network (ATN) and ADS, the respondent was also stated to be associated with these companies and was monitoring the bids. The address of both these companies was also used by ADS and ATN. According to the CBI, ADS was a division of the Atlas Group which provided turnkey high speed aeronautical satellite communications solutions from highly secure military application.

6. It has been further stated in the charge sheet that there was a close association between the respondent herein and Kashyap Kumar and Ravi Shankaran. Ravi Shankaran has received such critical information on national security from the compromised defence officers namely Vijender Rana, through the Jet Flash Pen Drive and e-mails and that he was also in touch with foreign companies. It has been further stated that a file bearing No. IDS/Ops/C412/32037, which is a file classified as secret and deals with matters related to Andaman and Nicobar Command of Indian Army which is of high strategic importance from the point of view

of national security and the fact that this document has been sent to the respondent herein and has been recovered from this Jet Flash Pen Drive clearly proves that the respondent was having access to such official records of Defence Ministry having a bearing on the safety and security of the nation, through some compromised officers who were paid/gratified for providing information illegally to him directly and also to Kulbhushan Parashar and Ravi Shankaran. A jet flash pen drive recovered from Vijender Rana, an officer posted in the Naval War Room, indicated the commission paid to the respondent by Kulbhushan Parashar and Ravi Shankaran in Mumbai and Delhi as between 0.5% to 1.5% for procurement of equipments. Documents seized from the residential premises of Kulbhushan Parashar contained official correspondence between the Atlas Group of Companies with the armed forces and the Ministry of Defence relating to the supply of equipment for the Indian Army for which ATN was one of the bidders. Kulbhushan Parashar is stated to have purchased pen drives and distributed it to the other officers including Vijender Rana and S.L. Survey. Therefore, it was stated that Kulbhushan Parashar and Ravi Shankaran had an active role in collecting and passing on of 6867 pages of classified defence information from the computers of the Naval War Room of Indian Air Force which is stated to be evident from the pen drives recovered from Vijender Rana and S.L.

Surve.

7. The respondent was summoned by the CBI to join investigation. As the respondent couldn't reply satisfactorily, he was arrested on 21st July, 2006. On 22nd July, 2006 the CMM, Delhi remanded him to police custody. Aggrieved by the said order of the CMM, Delhi, the respondent filed a petition bearing CrI. M.C. No. 4231 of 2006 under Section 482 Cr.P.C. before the High Court of Delhi challenging the aforesaid order of the CMM, Delhi and prayed for his release forthwith. On a subsequent application, the High Court on 17th August, 2006 permitted the respondent to amend the prayer clause seeking quashing of the order dated 22nd July, 2006 and "all orders/proceedings consequent thereto in view of the subsequent developments".
8. On 18th October, 2006 a complaint under Section 13 of the OSA was filed and on the next date i.e. 19th October 2006 a supplementary charge sheet were filed against the respondent. The CMM took cognizance of the offences under Sections 3 and 9 of the OSA and under Section 409/109 read with Section 120-B IPC. On 13th April, 2007, an application of bail by respondent was rejected by the CMM. The respondent's subsequent application for bail was dismissed by the ADJ, Delhi on 29th May, 2007. The respondent then preferred a bail application bearing Bail Application

No. 2546 of 2007 under Section 439 Cr.P.C. before the High Court of Delhi praying for the grant of bail.

9. The High Court in its common judgment and order dated 30th May 2008 disposed both the matters pending before it (i.e. Cr.M.C. No. 4231 of 2006 and Bail Application No. 2546 of 2007) by granting bail to the respondent on furnishing a personal bond in the sum of Rs. 10 lakh with two sureties in the like amount to the satisfaction of the trial court. Pursuant to the order of the High Court, the trial court enlarged the respondent on bail on 03.06.2008. The respondent, therefore, is presently on bail and there is no allegation that at any point of time subsequent thereto he has misused or mis-utilised the liberty granted to him.

10. Aggrieved by the said decision of the High Court, the appellant has preferred the present appeal. It was contended that the instant case is related to leakage of sensitive classified information relating to defence matter of India by use of advanced communication technologies like Pen Drives, Scanners, Fax Machines and E-mails etc. and that over six thousand pages of sensitive information were taken out from the Directorate of Naval Operation (DNO) and Air Force Headquarters, for a purpose prejudicial to safety and interest of India. It is evident that the crime is of grave nature. The national security was jeopardized and no

offence is graver than the offence where national interest was put on stake. In view of the same, it was urged that the High Court erred in granting bail to the respondent.

11. On the other hand, it was forcefully argued on the behalf of the respondent that the High Court rightly granted the bail to the respondent as there was no material on record to show that the respondent was a director/principal officer of Atlas Interactive India Ltd or that he was heading the Atlas Group of Companies in India of which ADS formed a part. It was also contended that the only evidence available against the respondent is that he is an authorised signatory of the bank accounts of the ATN and there was no evidence to show that the pen drives which were recovered from Vijendra Rana were in the possession of the respondent at any time. Further, there was no evidence of transmission of the material by the co-accused to the respondent. The pen drives were in an unsealed condition and multiple copies were made by the authorities nine months prior to the pen drives being taken in possession by the CBI. Neither the respondent has made any disclosure statement leading to any recovery nor have any incriminatory documents been seized from the respondent. Further, no link has been established between the pen drives

and any computer belonging to the respondent either at his residence or in his office. The aforesaid submissions were carefully considered by us.

12. Before further dwelling into the matter we would like to clarify here that nothing discussed herein or observation made herein while disposing the instant appeal be treated as any comment on the merit and also the trial and the same must not influence the opinion of the trial court in any manner.

13. Our attention has been drawn to the decision of the Supreme Court in State v. Jaspal Singh Gill, (1984) 3 SCC 555 @ 559, wherein this Court has observed as follows:

“9. The offence punishable under Section 3 of the Official Secrets Act, 1923 with which the respondent is charged relates to military affairs and it is punishable with imprisonment which may extend to fourteen years. This Court in State v. Captain Jagjit Singh¹ has indicated that the Court should exercise a greater degree of care in enlarging on bail an accused who is charged with the offence punishable under Section 3 of the Official Secrets Act when it relates to military affairs. I have also gone through the decisions of this Court in Gurcharan Singh v. State (Delhi Administration)² and Gudikanti Narasimhulu v. Public Prosecutor, High Court of Andhra Pradesh³ which deal with the principles governing the grant of bail. It may be mentioned here that in the last of the above cases, the accused had been acquitted by the trial court but convicted by the High Court on appeal. On a consideration of the above three decisions, I am of the view that *the Court before granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced should take*

into consideration various matters such as the nature and seriousness of the offence, the character of the evidence, circumstances which are peculiar to the accused, a reasonable possibility of the presence of the accused not being secured at the trial, reasonable apprehension of witnesses being tampered with, the larger interests of the public or the State and similar other considerations.”

(emphasis added)

14. So, before granting bail in cases involving non-bailable offences particularly where the trial has not yet commenced, the first aspect which must be examined is with regard to the nature and seriousness of the offence. Inter-alia, one of the charges against the respondent is Section 3 of the OSA. A perusal of Section 3 shows that it contemplates two kinds of offences, one which attracts a greater punishment of 14 years and the other with a lesser punishment of 3 years. The appellant has relied on several decisions of this Court to establish that when it is unclear which punishment to be applied under Section 3 of OSA, the Court must proceed on the assumption that it is the more severe i.e. 14 years which is to be applied. However, the cases cited by the appellant are distinguishable. In none of the cases cited by the appellant, the accused had already undergone pre-trial detention of twenty two months without even a prima facie determination of the seriousness of the offence.

15. Further, with regard to nature and character of the evidence, the prosecution case is essentially based on circumstantial evidence. It would

neither be appropriate nor desirable to discuss the entire evidence as the same is the subject matter of the trial. However, for the limited purpose of the disposal of the present appeal we deem it appropriate to consider the character of the evidence. It is the case of the appellant that a copy of document in PDF form found in the pen drive recovered from Vijender Rana which is a letter dated 5th January, 2005 from an official of Indian High Commission, London to the Ministry of External Affairs, New Delhi. The right hand top corner of the copy of the documents contains the word: 'Kind Attention A. Verma'. According to the respondent no such document is available in the records of the MEA and 'A. Verma' could well refer to an Anupam Verma. The veracity of such rival claims can only be decided during the trial.

16. It was argued by the appellant that the pen drives recovered from the co-accused Vijendra Rana and the documents seized from the premises of Kulbhushan Parashar contain sensitive information. However, there is no denial of the fact that there was neither any recovery from the respondent nor at the instance of the respondent. Further, no satisfactory answer has been provided by the appellants to counter the submission of the respondent that the pen drives were not temper proof when handed over

to the CBI and before handing it to the CBI, several copies of their contents was made by the authorities.

17. The appellant has drawn our attention to a decision of this Court in Govt. of NCT, Delhi v. Jaspal Singh 2003 (10) SCC 586 @ 593, wherein this Court observed:

“8. So far as the scope of Section 3(1) (c) of the Act is concerned, it was urged for the respondent that unless the articles enumerated are shown to be “secret” document or material and that besides their collection they were published or communicated to any other person, the charge under the said provision could not be said to have been made out. Apparently, the inspiration for such a submission was the judgment of a learned Single Judge of the Bombay High Court reported in State of Maharashtra v. Dr B.K. Subbarao¹. We are unable to agree with this extreme submission on behalf of the respondent. This Court in Sama Alana Abdulla v. State of Gujarat² had held: (a) that the word “secret” in clause (c) of sub-section (1) of Section 3 qualified official code or password and not any sketch, plan, model, article or note or other document or information, and (b) when the accused was found in conscious possession of the material (map in that case) and no plausible explanation has been given for its possession, it has to be presumed as required by Section 3(2) of the Act that the same was obtained or collected by the appellant for a purpose prejudicial to the safety or interests of the State. *Further, each one of the several acts enumerated in clause (c) of sub-section (1) of Section 3 of the Act, by themselves will constitute, individually, an offending act to attract the said provision and it is not necessary that only one or more of them and particularly, publishing or communication of the same need be conjointly proved for convicting one charged with the offence of obtaining or collecting records or secret official code or password or any sketch, plan, model, article or note or other document or information. Any such interpretation would not only amount to doing violence to the language, scheme*

underlying and the very object of the said provision besides rendering otiose or a dead letter the specific provision engrafted in sub-section (2) of Section 3 of the Act. In view of this, the decision of the Single Judge of the High Court in B.K. Subbarao¹ cannot be said to lay down the correct position of law on the scope of Section 3(1) (c) of the Act.”

(emphasis added)

18. The above-mentioned case succinctly explains the ambit of Section 3(2)

of the OSA by stating that once the accused is found in conscious possession of the material then it would be presumed that such possession was for a purpose prejudicial to the interests of the State. Clearly, the said presumption under Section 3(2) of the OSA is a rebuttable presumption and the respondent will have an opportunity to rebut the same during the trial. Further, the case relied hereinabove by the appellant is clearly distinguishable as in the above-mentioned case the stage was that of post-conviction and has little bearing on the present one since in the present case, the evidence is yet to be adduced in the trial.

19. Further, there is no denial of the fact that the respondent is an approver in another case involving one Ashok Agarwal, a former Deputy Director of Enforcement. The said order of making approver is under challenge before this Court. The respondent has been provided security by the Delhi Police due to the death threats faced by him in that case. Restrictions have already been imposed on the respondent on his

traveling abroad in earlier matters (viz. under the FERA and the Passport Act). So, we find that the prosecution would have no difficulty in securing the presence of the respondent during the trial. Despite the fact that he is on bail for last about ten months there is no allegation about any misuse or abuse of the liberty or violation of any of the conditions.

20. In view of the aforesaid discussion, we find no infirmity in the judgment and order passed by the High Court. We make it clear that whatever views and conclusion we have expressed in this order of ours are purely prima facie and for the limited purpose of finding out whether the impugned order of the High Court is sustainable or not. The trial court shall not in any manner be influenced by these observations of ours or that of the High Court made in the course of the order granting bail as all such observations are tentative in nature. The trial court would necessarily examine the evidence after it is led on their own merit and without being in any manner influenced by this order and also the order passed by the High Court granting bail. We, however, make it clear that if at any point of time there is any adverse allegation against the respondent regarding any misuse or abuse of the liberty granted to him and as and when an application is filed with such allegation seeking for cancellation of bail, the trial court shall deal with such contention and

prayer in accordance with law and pass such order as deem fit and proper.

21. Accordingly, the present appeals are hereby dismissed with the aforesaid observations.

J.

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[S.B. Sinha]

.....J.
[Dr. Mukundakam Sharma]

New Delhi,
May 6, 2009

