

**IN THE HIGH COURT AT CALCUTTA
CRIMINAL REVISIONAL JURISDICTION
APPELLATE SIDE**

The Hon'ble **JUSTICE SUVRA GHOSH**

CRM (SB) 145 of 2024

Kuntal Ghosh
v/s.

Enforcement Directorate Kolkata Zonal Office-II

For the Petitioner: Mr. Joydeep Biswas, Adv,
Mr. Mrityunjoy Chatterjee, Adv,
Mr. Debroop Majumder, Adv,
Mr. Kaushik Ghosh, Adv,
Mr. Victor Chatterjee, Adv.

For the Enforcement Directorate: Mr. Phiroze Edulji, Adv.,
Ms. Anamika Pandey, Adv.

Judgment delivered on: 20-11-2024

SUVRA GHOSH, J. :-

- 1) The petitioner seeks parity with co-accused Manik Bhattacharyya who was granted bail by this Court on 12th September, 2024. The present ECIR was registered for investigation of offence under The Prevention of Money Laundering Act, 2002 (hereinafter referred to as the Act of 2002) on 26th June, 2022 following the FIR registered by the CBI on 9th June, 2022. Allegation against the petitioner is under sections 7/7A/8 of the Prevention of Corruption Act read with sections 120B/420/467/468/471/34 of the Indian Penal Code. The petitioner was arrested on 21st January, 2023 and is in custody till date.

- 2) To substantiate the prayer for bail of the petitioner, learned counsel for the petitioner has submitted as hereunder:-
- 3) The petitioner is in custody for about twenty-two months upon being implicated on the basis of the statement of co-accused Tapas Kumar Mondal. Six complaints were filed by the Enforcement Directorate (hereinafter referred to as the E.D.) in this case and the petitioner was named for the first time in the third complaint. Further investigation is still in progress and there is no chance of disposal of the case in near future. There are three hundred witnesses who need to be examined to prove the case and thousands of pages of documents to be proved. The petitioner was lastly interrogated in judicial custody before one year and eight months and not any further till date.
- 4) Tapas Kumar Mondal who is the principal accused of the case and claimed to have collected more than a few hundred crores of rupees by duping several persons was granted bail by learned Trial Court on 27th March, 2024. He has also been granted bail in the predicate offence on 8th October, 2024. Statement of Tapas Kumar Mondal was recorded under section 50 of the Act of 2002 in collusion with the respondent to implicate the petitioner falsely. Learned counsel has taken this Court to the order impugned passed by the Learned Special (CBI) Court No. 3 and Second Special NIA Court, Bichar Bhavan, Calcutta, on 8th October, 2024 in M.L. Case No. 5 of 2024 rejecting the prayer for bail of the petitioner. Referring to paragraph 33.3 of the order, learned counsel has submitted that the 325 candidates who were allegedly illegally qualified for TET-2014 in lieu of Rs. 3.25 crores were neither identified, nor examined. The amount of

Rs. 16 crores referred to in paragraph 33.4 of the order has not been recovered from the petitioner. Only Rs.1 crore was found to be transferred to the bank account of the petitioner post his arrest. Six candidates referred to in paragraph 33.6 have not been made witnesses in any of the complaints. The panel has not been set aside and new appointments are being made from the said panel. There is also no document to substantiate the allegations made out in paragraphs 33.7 and 33.8 to the effect that the petitioner collected Rs. 6 lakhs per candidate in order to facilitate their illegal selection as group-D staff under the West Bengal Government, collected huge money from various candidates for their illegal selection to the post of teaching and non-teaching staff under the West Bengal Government and also extorted an amount of Rs. 2.4 crores @ Rs. 20,000 per student from 1200 candidates for facilitating them to fight Court cases for appointment as teachers.

- 5) The petitioner seeks bail upon consideration of the merits of the case as well as on account of his prolonged detention without trial.
- 6) Learned counsel for the petitioner has placed reliance on the following authorities in support of his contention.

1. Sheikh Javed Iqbal @ Ashfaq Ansari ... vs. The State of Uttar Pradesh reported in (2024) 8 SCC 293.
2. Union of India vs. K.A Najeeb reported in (2021) 3 SCC 713.
3. Ramkripal Meena vs. Directorate of Enforcement reported in 2024 SCC OnLine SC 2276.

4. Manish Sisodia vs. Directorate of Enforcement reported in 2024 SCC OnLine SC 1920.
 5. Javed Gulam Nabi Shaikh vs. State of Maharashtra and Anr reported in Criminal Appeal No. 2787 of 2024.
 6. Sunil Dammani vs. Directorate of Enforcement reported in Criminal Appeal No. 4108 of 2024.
 7. Mukesh Salam vs. State of Chhattisgarh & Anr reported in Special Leave to Appeal (Crl) No. 3655 of 2024.
 8. Prem Prakash vs. Union of India reported in SLP (Crl) No. 5416 of 2024.
 9. Manik Bhattacharya vs. Enforcement Directorate Kolkata Zonal Office-II reported in C.R.M (SB) No. 72 of 2024.
 10. Kaustav Roy vs. Enforcement Directorate reported in C.R.M (DB) No. 2929 of 2024.
- 7) In opposing the prayer for bail, learned counsel for the E.D. has canvassed the following argument. At the outset, learned counsel has referred to a letter issued by the E.D. which says that the bail order dated 12th September, 2024 in the case of Manik Bhattacharyya v/s. Directorate of Enforcement in C.R.M. (SB) 72 of 2024 granted by this Court has been accepted by the competent authority.
- 8) The petitioner is not at par with Manik Bhattacharyya insofar as his period of detention is concerned since he was arrested on 21st January,

2023 and is in custody for twenty months whereas Manik Bhattacharyya was arrested on 10th October, 2022 and was in custody for 23.4 months before being enlarged on bail. On merits, learned counsel has submitted that investigation qua the petitioner is complete. The bail prayer of the petitioner in connection with the predicate offence was turned down by the Hon'ble Division Bench of this Court by an order passed on 2nd May, 2024 in C.R.M. (DB) 681 of 2024 wherein the Hon'ble Division Bench took into consideration the period of detention of the petitioner as well as the allegations made against him in the charge sheet.

- 9) Taking this Court to the second supplementary prosecution complaint, learned counsel has submitted that the total value of immovable property acquired by the petitioner out of proceeds of crime is Rs. 49,06,148/- and total value of attached movable property is to the tune of Rs. 1,00,17,832.00/-. Learned counsel has relied upon the statements of Sukumar Dan, Dibyendu Bagh, Jitendra Nath Roy, Sukhen Kumar Rana, Md. Mohidul Haque Ansari and Deepak Kumar Biswas recorded under section 50 of the Act of 2002 which speak about the direct involvement of the petitioner in the alleged offence. The bank statements of the petitioner obtained in course of investigation reveal that huge fund running into crores of rupees was placed in the account of the petitioner either in cash or by bank transfer. The role of the petitioner in the alleged offence has been described in detail in the complaint. The petitioner was actively involved in process of illegal selection of candidates in TET- 2014 as well as appointment of candidates as primary teachers, upper primary teachers, Assistant teachers for class IX to XII and Group-D staff under

the West Bengal Government in lieu of which he collected huge amount of money amounting to more than 100 crores of rupees from the candidates. Investigation led to seizure of incriminating documents and electronic devices from the residence of the petitioner. During a confrontational statement between the petitioner and Tapas Kumar Mondal on 3rd November, 2022 the petitioner admitted receipt of Rs. 3.82 crores from Tapas Kumar Mondal and another Rs. 16 crores for arranging for various illegal appointments. He had close nexus with the other influential persons involved in the offence and played a pivotal role in the illegal recruitment.

10) Learned counsel has placed reliance on the following judgments in support of his contention.

1. Maru Ram Etc. vs. Union of India & Anr reported in 1981 SCR (1)1196.
2. Karan Singh vs. State of Haryana & Anr reported in 2013 (12) SCC 529.
3. Satyendar Kumar Jain vs. Enforcement Directorate reported in 2024 SCC OnLine SC 317.
4. Partha Chatterjee vs. Enforcement Directorate [CRM (SB) 180 of 2023].
5. Kuntal Ghosh vs. C.B.I. [C.R.M (DB) 681 of 2024].
6. Manish Sisodia vs. C.B.I reported in 2023 SCC OnLine SC 1393.

7. Tarun Kumar vs. Enforcement Directorate reported in 2023 SCC OnLine SC 1486.
8. Vijay Madanlal Choudhary vs. Union Of India reported in 2022 SCC OnLine SC 929.
9. State of Gujarat vs. Mohanlal Jitamalji Porwal reported in (1987) 2 SCC 364.
10. Y.S Jagan Mohan Reddy vs. C.B.I reported in (2013) 7 SCC 439.
11. Nimmagadda Prasad vs. C.B.I reported in (2013) 7 SCC 466.
12. Gautam Kundu vs. Directorate of Enforcement (Prevention of Money-Laundering Act) reported in (2015) 16 SCC 1.
13. State of Bihar vs. Amit Kumar reported in (2017) 13 SCC 751.
14. Anil Kumar Yadav vs. State (NCT of Delhi) reported in (2018) 12 SCC 129.
15. Tofan Singh vs. State of T.N. reported in (2021) 4 SCC 1.
16. Subires Bhattacharyya vs. C.B.I. reported in 2022 SCC OnLine Cal 4307.
17. Anubrata Mondal vs. C.B.I, reported in 2023 SCC OnLine Cal 23.
18. Ranjitsing Brahmajeetsing Sharma vs. State of Maharashtra reported in (2005) 5 SCC 294.
19. Union of India vs. Varinder Singh reported in (2018) 15 SCC 248.
20. Directorate of Enforcement vs. Aditya Tripathi reported in 2023 SCC OnLine SC 619.

21. Saumya Chaurasia vs. Enforcement Directorate reported in 2023 SCC OnLine SC 1674.

22. Pavana Dibbur vs. Enforcement Directorate reported in 2023 SCC OnLine SC 1586.

- 11) In reply, learned counsel for the petitioner has submitted that when the petitioner was taken into police custody, his bank accounts showed balance of little more than Rs. 3 Lakhs. The amount of Rs. 1.16 lakhs and odd was deposited in his account after his arrest by entities not known to him. The names and identities of the fictitious candidates referred to by the E.D. has not been disclosed. Out of three deeds seized by the E.D. in connection with the property of the petitioner, two were executed in 2009 and the third deed pertains to the property of the petitioner's wife and has nothing to do with the alleged offence. The deeds executed in favour of Indrani Devi Institute of Education represented by the petitioner as its President, do not bear the signature, fingerprints or photograph of the petitioner mandated by law and only disclose his name.
- 12) I have considered the rival contention of the parties and material on record.
- 13) The Hon'ble Supreme Court, in the authority in Prosanta Kumar Sarkar v/s. Ashis Chatterjee and another reported in (2010) 14 Supreme Court Cases 496 has laid down the factors which are to be borne in mind while considering an application for bail:-
- i) whether there is any prima facie or reasonable ground to believe that the accused had committed the offence;*
 - ii) nature and gravity of the accusation;*

- iii) *severity of the punishment in the event of conviction;*
- iv) *danger of the accused absconding or fleeing, if released on bail;*
- v) *character, behaviour, means, position and standing of the accused.*
- vi) *likelihood of the offence being repeated.*
- vii) *reasonable apprehension of the witnesses being influenced;*
and
- viii) *Danger, of course, of justice being thwarted by grant of bail-*

14) It is pertinent to refer to the order passed by the Hon'ble Division Bench of this Court on 2nd May, 2024 in C.R.M. (DB) 681 of 2024 wherein the Hon'ble Division Bench has turned down the bail prayer of the petitioner with certain observation (in connection with the predicate offence). It shall be useful to reproduce the relevant portion of the order.

*“Allegations in the charge sheet disclose deep and pervasive corruption prevailing in the recruitment process of teachers in primary schools for the year 2016. Office bearers of the Board had entered into a conspiracy and devised an ingenious stratagem to ensure appointment of favoured candidates who were ready and willing to shell out illegal gratification. Deserving candidates were ignored. Petitioner played a vital role to set up a web of agents and sub agents who approached these undeserving candidates and procured illegal gratification. To enable this criminal enterprise he floated a fake website of West Bengal Board of Primary Education titled *www. Wbtetresults.com*. Therefore, petitioner and his*

agents and sub agents induced candidates to pay them illegal gratification for wrongful appointments.

Gravity of the offence and prima facie involvement of the petitioner therein do not required further emphasis. It has been highlighted by the Apex Court that in offences involving corruption in public offices, gravity of the crime ought not to be measured only with reference to quantum of punishment. Impact of such offences on the purity of public administration and rule of law are relevant considerations. In the present case the corruption has polluted the recruitments to primary schools. It is the fundamental duty of the State to provide free and compulsory education upto the age of 14 years. When this constitutional duty is polluted and devastated through the greed of public servants and their associates like the petitioner, gravity and magnitude of the crime must be seen through the prism of constitutional dereliction and not merely with reference to the quantum of punishment.”

- 15) Since the present complaint is the fallout of the predicate offence, prima facie involvement of the petitioner in the alleged offence cannot be ruled out. The extent of his involvement is required to be adjudicated by the learned Trial Court at the appropriate stage of the proceedings upon recording evidence of the witnesses.
- 16) The confrontational proceedings wherein Tapas Kumar Mondal and the petitioner were questioned in presence of each other reveals that as per advice of the petitioner, Tapas Kumar Mondal gave the petitioner a list of 325 candidates of TET-2014 and cleared all of them for appointment for which the petitioner charged a total of Rs. 3.25 crores @ Rs. 1 lakh per

candidate from Tapas Kumar Mondal. This fact was admitted by both the petitioner and Tapas Kumar Mondal. Therefore proceeds of crime passed on to the petitioner from Tapas Kumar Mondal.

- 17) In view of the incriminating material which transpired against the petitioner during investigation and the observation made by the Hon'ble Division Bench as stated earlier, prima facie involvement of the petitioner in the offence cannot be ruled out. The material collected against the petitioner satisfies the presumption under section 22 and 23 of the Act of 2002 and it cannot be held at this stage that the petitioner is "not guilty of such offence".
- 18) It is pertinent to refer to the authority in Tarun Kumar v/s. Assistant Director, Directorate of Enforcement reported in 2023 Supreme Court Cases OnLine SC 1486 wherein the Hon'ble Supreme Court has made the following observation:-

"Lastly, it may be noted that as held in catena of decisions, the economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Undoubtedly, economic offences have serious repercussions on the development of the country as a whole. To cite a few judgments in this regard are Y.S.

Jagan Mohan Reddy v. Central Bureau of Investigation ⁸,
Nimmagadda Prasad v. Central Bureau of Investigation ⁹,
Gautam Kundu, v. Directorate of Enforcement (supra),
State of Bihar v. Amit Kumar alias Bachcha Rai ¹⁰,. This
 Court taking a serious note with regard to the economic
 offences had observed as back as in 1987 in case of *State
 of Gujarat v. Mohanlal Jitamalji Porwal* ¹¹, as under:-

*The entire community is aggrieved if the
 economic offenders who ruin the economy of the State are
 not brought to books. A murder may be committed in the
 heat of moment upon passions being aroused. An
 economic offence is committed with cool calculation and
 deliberate design with an eye on personal profit
 regardless of the consequence to the community. A
 disregard for the interest of the community can be
 manifested only at the cost of forfeiting the trust and faith
 of the community in the system to administer justice in an
 even-handed manner without fear of criticism from the
 quarters which view white collar crimes with a permissive
 eye unmindful of the damage done to the National
 Economy and National Interest...”*

- 19) True, the petitioner has to overcome the rigours of the twin conditions laid down under section 45 of the 2002 Act which are the guiding factors for grant of bail.

- 20) Section 479 of the Bharatiya Nagarik Suraksha Sanhita, 2023 as it stands after amendment of section 436A of the Code of Criminal Procedure spells out that the first time offender (who has never been convicted for any offence in the past) shall be released on bond by the Court if he has undergone detention for the period extending up to one-third of the maximum period of imprisonment specified for such offence under that law. The Hon'ble Supreme Court, in the order passed on 23rd August, 2024 in writ petition (Civil) no. 406 of 2013 has made the amended provision applicable to all under-trials in pending cases irrespective of whether the case was registered against them before 1st July, 2024 when the new legislation came into effect.
- 21) In the judgment in Manish Sisodia (supra), the Hon'ble Supreme Court has held that the right to bail in cases of delay coupled with incarceration for a long period should be read into section 439 of The Code of Criminal Procedure and section 45 of the 2002 Act. The Hon'ble Court has referred to the authority in Javed Gulam Nabi Shaikh v/s. State of Maharashtra and another reported in 2024 Supreme Court Cases OnLine SC 1693 wherein the Hon'ble Court has dealt with the law laid down in the judgments in Gudikanti Narasimhulu and others v/s. Public Prosecutor, High Court of Andhra Pradesh reported in (1978) 1 Supreme Court Cases 240, Shri Gurbaksh Singh Sibbia and Others v/s. State of Punjab reported in (1980) 2 Supreme Court Cases 565, Hussainara Khatoon and Others (I) v/s. Home Secretary, State of Bihar reported in (1980) 1 Supreme Court Cases 81, Union of India v/s. K.A. Najeeb reported in (2021) 3 Supreme Court Cases 713 and Satender Kumar Antil v/s.

Central Bureau of Investigation and Another reported in (2022) 10 Supreme Court Cases 51 and observed as follows:-

“If the State or any prosecuting agency including the Court concerned has no wherewithal to provide or protect the fundamental right of an accused to have a speedy trial as enshrined under Article 21 of the Constitution then the State or any other prosecuting agency should not oppose the plea for bail on the ground that the crime committed is serious. Article 21 of the Constitution applies irrespective of the nature of the crime.” The Hon’ble Court has also observed that the principle bail is a rule and refusal is an exception is, at times, followed in breach and it is high time that the trial Courts and the High Courts should recognize the principle that bail is rule and jail is exception.

- 22) Learned counsel for the E.D. has pointed out that section 479(2) of the Bharatiya Nagarik Suraksha Sanhita envisages that where the investigation, inquiry or trial in more than one offence or in multiple cases are pending against a person, he shall not be released on bail by the Court. But this Court holds that there are several instances including some referred to on behalf of the petitioner where the Hon’ble Supreme Court has released the accused on bail on the ground of prolonged custody and delay in trial despite the accused being implicated in other criminal cases.
- 23) Section 4 of the Act of 2002 provides for rigorous imprisonment for a term which shall not be less than three years but which may extend to seven years and also fine. The petitioner is in custody for about twenty-two months. Though according to learned counsel for the E.D, investigation

qua the petitioner is complete, charge is yet to be framed. Delay in trial is not wholly attributable to the petitioner. The case involves several thousands of pages of documents and about three hundred witnesses to be examined. Chance of trial being concluded in near future is bleak. Since investigation qua the petitioner is complete and the documentary evidence on which the case rests is in custody of the E.D, there is no scope for the petitioner to tamper with the evidence. The petitioner is little short of completing one-third of the maximum period of imprisonment as laid down under section 479 of the 2023 Act. It is not in dispute that he is a first-time offender and has not been convicted of any offence earlier. In view of the evidence, both oral and documentary, to be examined by the learned Trial Court, completion of trial within the time frame in terms of section 479 of the 2023 Act is almost impossible. Rejecting the prayer of the petitioner at this stage and granting him liberty to renew his prayer upon completion of the said time frame shall be a futile exercise. Article 21 of the Constitution and section 479 of the 2023 Act complement each other and need to be construed in harmony with each other.

- 24) The Hon'ble Supreme Court has time and again held that prolonged incarceration before being pronounced guilty of an offence should not be permitted to become punishment without trial and in such a case Article 21 applies irrespective of the seriousness of the crime. The right to life and personal liberty enshrined under Article 21 of the Constitution is overarching and sacrosanct. A constitutional Court cannot be restrained from granting bail to an accused on account of restrictive statutory provisions in a penal statute if it finds that the right of the accused-under

trial under Article 21 of the Constitution has been infringed. Even in the case of interpretation of a penal statute, howsoever stringent it may be, a constitutional Court has to lean in favour of constitutionalism and the rule of law of which liberty is an intrinsic part.

- 25) This Court is not oblivious of the fact that the aspect of continued detention of the petitioner was considered by the Hon'ble Division Bench in C.R.M. (DB) 681 of 2024. The Hon'ble Division Bench held that further detention of the petitioner was necessary to insulate the process of further investigation with regard to the nexus of the petitioner with the office bearers of the Board and to trace out the proceeds of crime which were rooted through the petitioner to other influential persons. Complaint of the present case was also taken note of by the Hon'ble Division Bench.
- 26) The said order was passed before about six months and in the meantime investigation has concluded. It is also not in dispute that the petitioner faced custodial interrogation lastly before one year and eight months and not thereafter.
- 27) In view of the circumstances as stated hereinabove and the observation of the Hon'ble Supreme Court with regard to the right to speedy trial under Article 21 of the Constitution as well as prolonged incarceration, this Court is inclined to release the petitioner on bail subject to stringent conditions to secure his attendance as well as deter him from influencing the witnesses of the case.
- 28) Accordingly, the application for bail being C.R.M. (S.B) 145 of 2024 is allowed.

- 29) The petitioner be released on bail upon furnishing bond of Rs. 10,00,000/- (Rupees Ten lakhs) with adequate sureties, half of whom should be local, subject to the following conditions:-
- a. The petitioner shall surrender his passport with the learned trial Court at once.
 - b. He shall not leave the territorial jurisdiction of the learned trial Court without leave of the trial Court.
 - c. He shall appear before the learned trial Court on every date of hearing fixed before the learned Court.
 - d. He shall not tamper with evidence or intimidate witnesses in any manner whatsoever.
 - e. He shall not indulge in any criminal activity and shall not communicate with or come in contact with the witnesses.
 - f. He shall provide his mobile number before the learned trial Court and shall not change the said number without prior intimation to the Court.
- 30) In the event the petitioner violates any of the bail conditions as stated above, the learned trial Court shall be at liberty to cancel his bail in accordance with law without further reference to this Court.
- 31) It is made clear that the observation made in this judgment is for the limited purpose of deciding the bail application and shall not be construed as an expression of opinion on the merits of the case. The learned trial Court shall deal with the matter independently in accordance with law without being influenced by any observation which may have been made in this judgment.

- 32) All parties shall act on the server copy of this judgment duly downloaded from the official website of this Court.
- 33) Urgent certified website copies of this judgment, if applied for, be supplied to the parties expeditiously on compliance with the usual formalities.

(Suvra Ghosh, J)

8 (2013) 7 SCC 439

9 (2013) 7 SCC 466

10 (2017) 13 SCC 751

11 (1987) 2 SCC 364