

IA No.3/2024
CNR No. DLCT11-000981-2019

CR No.5/2019

FIR No: 56/2017

State Vs. Sukash @ Sukesh Chandershekar
& Ors.

Under Section : 170, 201, 419, 420, 468, 471, 474 &
120-B IPC and Section 8 of PC Act

PS : Crime Branch

30.08.2024

Present : Mr. Gyan Prakash Ray, Ld. APP for the State.
Mr. Anant Malik and Ms. Snighdha Singhi, Ld. Counsels for
applicant/accused Sukash @ Sukesh Chandershekar.

1. Submissions heard on the present bail application of the
accused under section 483 read with section 479 of the Bharatiya Nagarik
Suraksha Sanhita 2023 (*hereafter referred as BNSS*).

Background and allegations

2. The contextual background and allegations emerging from the
present FIR in question against the accused persons, including the present
applicant, may be summarised as under.

3. After the demise of Ms. J. Jayalalithaa, the then Chief
Minister of Tamil Nadu, the political party AIADMK came to be split into
two factions viz V.K. Sasikala faction to which accused no.2 (A-2) T.T.V.
Dhinakaran belonged and E. Madhusudhanan faction. These factions now
vied for 'Two Leaves' election symbol of AIADMK.



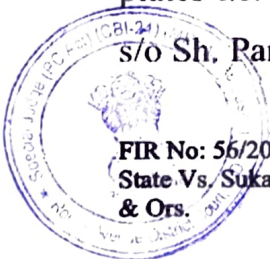
4. The matter was before the Election Commission of India (ECI) when A-2 T.T.V. Dhinakaran allegedly entered into a criminal conspiracy with accused no.1 (A-1) Sukash @ Sukesh Chandershekar, accused no.3 (A-3) T.P. Mallikarjun and accused no.7 (A-7) B. Kumar to secure a favourable order from ECI, on payment of gratification of Rs. Fifty Crores to A-1 Sukash @ Sukesh Chandershekar.

5. A-2 T.T.V. Dhinakaran purportedly also wanted a favourable order from ECI for declaring Bye-Elections for the Dr. Radhakrishnan Nagar Assembly Constituency in Tamil Nadu at an early date and preferred the Bye-Elections to be held on 05.05.2017, as he intended to be a candidate and considered 05.05.2017 to be an auspicious day for him.

6. A-2 T.T.V. Dhinakaran, with the help of A-3 T.P. Mallikarjun and the other co-accused persons allegedly sent a sum of Rs. Two Crores to A-1 Sukash @ Sukesh Chandrashekar, using hawala channels, from Chennai to Delhi. Out of this sum of Rs. Two Crores, Rs. One Crore Thirty Lakhs were recovered from the room at hotel Hyatt, New Delhi occupied by A-1 Sukash @ Sukesh Chandershekar.

7. A-1 Sukash @ Sukesh Chandrashekar also allegedly personated to be a Member of Parliament, Rajya Sabha and had a false document viz the Identity Card of Rajya Sabha in his possession showing himself to be its member.

8. It is further alleged that A-1 Sukash @ Sukesh Chandershekar had got stickers of 'Member of Parliament' pasted on both the number plates i.e. front and rear of the car used by him by showing Sh. Narender s/o Sh. Panchu Ram the forged identity card of MP Rajya Sabha though he



was not the Member of Rajya Sabha.

9. The other allegation against him is that he personated as Kamlesh before Shah Faizal at the time of receiving the gratification sent on behalf of A-2 T.T.V. Dhinakaran.

10. The FIR came to be registered after a chain of events which commenced when ACP Sanjay Sehrawat, Inter-State Cell (ISC), Crime, Chankayapuri, New Delhi received a reliable information on 15.04.2017 that one person Sukash @ Sukesh Chandershekar, a resident of Bengaluru, had checked-in at Hotel Hyatt Regency, New Delhi with one of his associates and was staying in Room No.263. He was learnt to be in constant touch with T.T.V. Dhinakaran, AIADMK (Sasikala faction) Deputy General Secretary regarding a pending matter before the Election Commission of India pertaining to party symbol of AIADMK. This matter was likely to come for hearing before Election Commission of India on 17.04.2017 and Sukash @ Sukesh Chandershekar had promised to use his influence in ECI to get the matter resolved in favour of Sasikala faction. In lieu of this assistance, he was promised a sum of Rs. Fifty Crores. The information also was that Sukash @ Sukesh Chandershekar was a known cheat having several involvements in high profile cheating cases and was using expensive cars having print of Member of Parliament on both sides of the car.

11. The purported information further specified that in case a raid was conducted at Hotel Hyatt Regency, a large amount of cash could be recovered from the possession of Sukash @ Sukesh Chandershekar and that the said cash had been taken from Sasikala-Dhinakaran faction for exercising his influence at ECI in their favour.



FIR No: 56/2017
State Vs. Sukash @ Sukesh Chandershekar
& Ors.

12. ACP Sanjay Sehrawat telephonically shared this information with DCP, Crime who, after verifying the credentials of the information, directed him to take action in the matter. The ACP and his team of nine other officials of Delhi Police as well as the informer thereafter reached hotel Hyatt Regency, R. K. Puram around 1.30 AM and went to Room No.263 where the door was opened by a person who introduced himself as Sukash @ Sukesh Chandershekar. The raiding party disclosed its identity and over powered him.

13. The room was searched and one bag containing a sum of Rs.1.30 Crore was found in that room. Income Tax Authorities were informed about the recovery of this amount and the team brought Sukash @ Sukesh Chandrashekar to their office at Inter-State Crime/Crime, Chanakayapuri, Delhi for further interrogation.

14. One Mercedes car bearing registration No. RZ 14LC 0300 was also taken into possession from the parking of the Hotel. Its front and rear number plates had stickers of 'Member of Parliament' pasted on them.

Submissions on behalf of the applicant/accused

15. It is essentially canvassed by the Ld. Counsel that the accused has suffered detention in the present proceedings for a duration exceeding 7 years 4 months upon being apprehended on 15.04.2017 when the offences with which he has been charged vide order dated 17.11.2018 are under section 8 of the Prevention of Corruption Act, Section 120-B of IPC read with section 8 of the Prevention of Corruption Act, Section 170/201/419/420/468/471/474 of IPC and that none of these offences



contemplate punishment for a duration more than 7 years. The counsel has thus prayed that the accused be admitted to bail within the mandate of section 479 of the BNSS which is similar in scope to section 436A of The Code of Criminal Procedure 1973 (*hereafter referred as the Cr.PC*). It is further submitted that with the proceedings of the present trial having been stayed by the orders of the Hon'ble Supreme Court dated 14.12.2018 and 18.02.2019 as well as the orders of the Hon'ble High Court of Delhi dated 30.09.2019 (continued thereafter), there is no reasonable prospect of the trial concluding in the near future.

16. The counsel for the accused has further submitted that although previous bail applications of the accused were dismissed by the Ld. Predecessor of this court, the Hon'ble High Court of Delhi and also the Hon'ble Supreme Court, the last of the bail applications were dismissed almost five years back i.e. in the year 2019. It is agitated that the long passage of time since then and the benefit of section 479 BNSS are fresh grounds for maintaining the present bail application.

17. The Ld. Counsel has expressed that further bail applications were not moved on behalf of the accused since the year 2019 as he was also facing other trials under stricter statutes including MCOCA and PMLA.

18. It is next submitted on behalf of the accused that the Hon'ble Apex Court has reiterated the primacy of bail over jail as the rule even in strict legislations like UAPA and PMLA notwithstanding the 'twin conditions' incorporated in the said legislations. The Ld. Counsel has therefore prayed for relief under the benevolent ambit of section 479 BNSS.



FIR No: 56/2017
State Vs. Sukash @ Sukesh Chandershekar
& Ors.

Submissions on behalf of the State

19. The Ld. Prosecutor has opposed the application citing firstly the gravity of the allegations which relate to purported recovery of a cash amount of Rs. 1.3 crores in cash from the accused which, according to the allegations, was intended to be used for exercising undue influence with the Election Commission of India for obtaining a favourable election symbol for one faction of the AIADMK.

20. The Ld. Prosecutor has further submitted that sub section (2) of section 479 BNSS creates a bar upon the release of the accused by application of sub section (1) if he is involved in multiple cases.

21. The prosecutor has further agitated that the Explanation to section 479 BNSS additionally guards against grant of bail to accused persons who may have been instrumental in causing delay in proceedings. It has been contended by the Id Prosecutor that the delay in the present trial and the consequent long detention of the accused has been occasioned only on account of him having challenged the order on charge and the proceedings then having been stayed by the Hon'ble High Court.

Analysis and Reasons

22. The court would observe at the outset that since the plea for bail is essentially made with reference to section 479 BNSS, which is a benevolent provision couched in mandatory terms and which seeks to ameliorate the effacement of liberty by lengthy incarceration, the merits of the allegations against the applicant/accused shall not be determining the outcome of his plea for bail.



FIR No: 56/2017
State Vs. Sukash @ Sukesh Chandershekar
& Ors.

23. Section 479 is noted below:

479. (1) Where a person has, during the period of investigation, inquiry or trial under this Sanhita of an offence under any law (not being an offence for which the punishment of death or life imprisonment has been specified as one of the punishments under that law) undergone detention for a period extending up to one-half of the maximum period of imprisonment specified for that offence under that law, he shall be released by the Court on bail:

Provided that where such person is a first-time offender (who has never been convicted of any offence in the past) he 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:

Provided further that the Court may, after hearing the Public Prosecutor and for reasons to be recorded by it in writing, order the continued detention of such person for a period longer than one-half of the said period or release him on bail bond instead of his bond:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

Explanation.—In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.

(2) Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an 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.

(3) The Superintendent of jail, where the accused person is detained, on completion of one-half or one-third of the period mentioned in sub-section (1), as the case may be, shall forthwith make an application in writing to the Court to proceed under sub-section (1) for the release of such person on bail.

24. Considering the provisions with which the accused has been charged *inter alia* section 8 of the Prevention of Corruption Act; Section



120-B of IPC read with Section 8 of the Prevention of Corruption Act; Sections 170/201/419/420/468/471/474 of IPC, it is apparent and also not denied by the prosecution that the accused has undergone detention for a period more than half of the maximum period of imprisonment specified for these offences. The only offence which carries punishment beyond seven years is section 474 IPC which envisages imprisonment for life in the event of the forged document being of one of the descriptions mentioned in section 467 IPC. However, the order on charge dated 17.11.2018 did not invoke section 467 IPC against the accused. Hence, the accused is essentially facing trial for offences punishable with a maximum imprisonment of seven years. His detention for a term beyond seven years entails his mandatory release as section 479(1) requires the accused to be released in the event of detention for a period upto one half of the maximum period of imprisonment specified for the offence and the third Proviso to section 479 BNSS mandates release of the accused if the detention exceeds the maximum period of detention provided for the offence.

25. The accused is thus entitled to relief under section 479(1) read with the third Proviso to section 479 BNSS.

26. As to the submission of the Ld. Prosecutor that sub section (2) constrains such relief, the plain reading of the said sub section denies the interpretation forwarded by the Ld Prosecutor. Section 479 (2) is reproduced below:

(2) Notwithstanding anything in sub-section (1), and subject to the third proviso thereof, where an 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.



File No: 56/2017

**State Vs. Sukash @ Sukesh Chandershekar
& Ors.**

Page No.8/12

27. It is evident that sub section 2 is itself subject to the third proviso to section 479 which reads as under:

Provided also that no such person shall in any case be detained during the period of investigation, inquiry or trial for more than the maximum period of imprisonment provided for the said offence under that law.

28. Consequently, if the person incarcerated during trial has remained in detention for a period more than the maximum period of imprisonment provided for the offence, the bar created by sub section (2) would not be available for being pleaded by the prosecution. The present applicant - accused has admittedly suffered detention beyond the maximum period of imprisonment and his release is not constrained by section 479(2) BNSS.

29. The court may also observe that the BNSS, *albeit* substantially similar in content to the Cr.PC, is a new legislation. At the inceptional stages of a legislation, especially governing liberty, the prosecution and also the courts are well served by leaning in favour of the right to liberty rather than a strict or over zealous interpretation which defeats the purpose of amendment in the first phase. Infact, sub section (2) of section 479 BNSS is a novation over the erstwhile section 436A Cr.PC as no such sub section was crafted into section 436A Cr.PC. The Cr. PC, which came to be completely over hauled in 1973 had scrupulously avoided conflating the existence of multiple FIRs against a person with the question of liberty guaranteed by 436A if the requisite conditions (detention for upto one half or beyond the maximum period of imprisonment) were satisfied. In this perspective, 436A was a marquee contribution of the post colonial Cr.PC, 1973 to the cause of bail.



FIR No: 56/2017
State Vs Sukash @ Sukesh Chandershekar
& Ors.

30. Yet, the BNSS which has come about five decades later in 2023 and records among its stated objects and reasons that a “citizen centric criminal procedure is the need of the hour” and which calls for review of criminal laws in accordance with “contemporary needs and aspirations” has now added a provision inter alia sub section (2) section 479 which may defeat the intent of section 479 itself. The said provision does not appear to be either citizen centric or in accordance with contemporary needs and aspirations. Sub section (2) is rather repressive and reminiscent of colonial law making which aimed to keep persons behind bars and not beyond. The post independence jurisprudence on bail is, however, inextricably sourced from Article 21 of the Constitution. If an interpretation favouring sub section (2) of section 479 BNSS is readily accepted by the courts, the state would be at liberty to arbitrarily keep persons in custody for an indefinite period (notwithstanding detention for more than half the period of imprisonment prescribed for an offence) simply by registering or invoking other FIRs against the accused. Judicial interpretation must necessarily be a bulwark against a police state. The repeated reiteration of the principle of ‘bail and not jail’ in support of the value of liberty by the Hon’ble Apex Court, even in ‘twin conditions’ offences, ought to be honoured when reading the bail related provisions of the BNSS especially section 479 BNSS.

31. The next aspect agitated by the Ld. Prosecutor relates to the Explanation to section 479 BNSS operating to the detriment of the prayer of the accused for bail. The Explanation reads as under:

Explanation.- In computing the period of detention under this section for granting bail, the period of detention passed due to delay in proceeding caused by the accused shall be excluded.



32. Undoubtedly, this provision is designed to offset the period of delay in the computation of the duration of detention undergone by an accused. Yet, this provision must be read in a manner which promotes the objective of section 479 BNSS and safeguards the right to liberty and not in a construction which mechanically deletes a segment of the long years of detention suffered by an accused pending trial. In the present facts, the delay in proceedings is not capable of being ascribed to the accused as he was entitled to exercise his right of challenging the order on charge (passed by the Ld. Predecessor of this court). If the proceedings then came to be stayed by the Hon'ble Supreme Court and Hon'ble High Court of Delhi, the accused cannot be penalised by application of the Explanation to section 479 BNSS. The exercise of a remedy under law cannot be construed as cause for sanctioning the accused and robbing him of the mandate of section 479 (1) and the third Proviso to section 479 BNSS.

33. Since section 479 recognises the paramount status of liberty and aims to protect accused persons against long periods of detention without proceedings reaching finality, any interpretation which defeats the pre-eminence of bail over jail should be avoided.

34. In sum, the accused is entitled to release on bail under section 479 (1) and the third Proviso to section 479 of the BNSS.

Order

35. The application is allowed.

36. The accused is admitted to bail on furnishing PB & SB in sum of Rs. 5,00,000/- each.



FIR No: 56/2017
State Vs. Sukash @ Sukesh Chandershekar
& Ors.

37. The accused shall not contact, influence or coerce any person or witness connected with the present trial. The accused shall furnish his address and mobile phone number by way of a compliance report before the court upon release on bail. The same shall also be communicated to the investigating officer by the accused. The accused shall surrender his passport, if any, before the court and shall not travel outside India without permission from the court.

38. Let a copy of this order be given dasti to the Id counsel for the applicant/accused.

39. Let a copy of this order be sent to the Jail Superintendent, Central Jail, Delhi for information.

Dictated and announced in open court



— Sd—
(Vishal Gogne)
Special Judge (PC Act) CBI-24
(MPs/MLAs Cases), RADC
New Delhi/30.08.2024
Special Judge (PC Act) (CBI-24)
(MPs/MLAs Cases)
Rouse Avenue District Court
New Delhi