

IN THE SUPREME COURT OF INDIA

CRIMINAL/CIVIL APPELLATE JURISDICTION

807386

CRIMINAL APPEAL NO. 1076 OF 2004

(Appeal by Special Leave granted by this Court by its Order dated the 24th September, 2004 in Petition for Special Leave to Appeal (Criminal) No. 817 of 2004 against the Order dated the 24th June, 2003 of the High Court at Calcutta in CRM No. 1983 of 2003 arising out of Raiganj P.S. Case No. 258 of 2001 dated 4th August, 2001, G.R. No. 623 of 2001 and Charge Sheet No. 403 of 2001)

Krishna Pada Sarkar S/o Gour Pada Sarkar,
Proprietor of K.P. Sarkar & Co., a Chartered
Accountant firm, N.S. Road, Mohanbati,
P.O. & P.S. Raiganj, Distt. U. Dinajpur,
West Bengal

Certified to be the true copy

Assistant Registrar (Judl.)

27.09.24

Supreme Court of India

Appellant

VERSUS

The State of West Bengal,
Through Home Department
Secretariat Writers Building,
Calcutta

... Respondent

24TH SEPTEMBER, 2004

CORAM :

HON'BLE MR. JUSTICE N. SANTOSH HEGDE
HON'BLE MR. JUSTICE S.B. SINHA
HON'BLE MR. JUSTICE A.K. MATHUR

For the Appellant : M/s Krishnan Venugopal, Abhijit Sengupta, D. Bharat Kumar,
Anand, Rajneesh Kumar Singh, Vishal Arun and G. Venkatesh,
Advocates

For the Respondent : M/s Tara Chandra Sharma, Tarun Sharma and
Ms Neelam Sharma, Advocates

The Appeal above-mentioned being called on for hearing before this Court
on the 24th day of September, 2004, UPON perusing the record and hearing counsel

... 2/-

-2-

for the parties herein, THIS COURT DOTH in allowing the appeal ORDER THAT in the event of being arrested the appellant viz : Krishna Pada Sarkar S/o Gour Pada Sarkar shall be released on bail on his furnishing a self bond in the sum of Rs. 10,000/- (Rupees Ten Thousand) only with one surety for the like amount to the satisfaction of the arresting authority or the trial Court as the case may be and it is further directed that the above named appellant shall abide by the conditions enumerated in Section 438 (2) of the Cr. P.C.;

AND THIS COURT DOTH FURTHER ORDER that this ORDER be punctually observed and carried into execution by all concerned;

WITNESS the Hon'ble Shri Ramesh Chandra Lahoti, Chief Justice of India at the Supreme Court, New Delhi, dated this the 24th day of September, 2004.

(A.L. JAIN)

ADDITIONAL REGISTRAR (JUDL.)

M Kumar

SUPREME COURT

CRIMINAL/CIVIL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 1076 OF 2004.

Krishan Pada Sarkar

— Appellant

Versus

The State of West Bengal

— Respondent

HIGH COURT OF CALCUTTA AT CALCUTTA.

(C.R.M NO.1983 of 2003).

ORDER ALLOWING THE APPEAL

DATED THIS THE 24TH DAY OF SEPTEMBER, 2004.

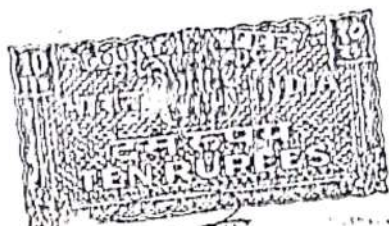
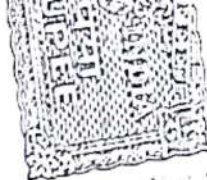
Mr. Abhijit Sengupta

Advocate— on— record for the Appellant

Mr. Tara Chandra Sharma

Advocate on record for the Respondent

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IN THE HIGH COURT AT CALCUTTA

A Criminal Miscellaneous Jurisdiction

The 24th June, 2003.
Present :

The Hon'ble Mr. Justice Amit Talukdar,
and
The Hon'ble Mr. Justice Pravendu Narayan Sinha.

C.R.M. No. 1983 of 2003.

In the matter of :

An application under Section 438 of the Code of
Criminal Procedure, 1979.

And in the matter of :

Apprehension of arrest in connection with Raiganj
P.S. Case No. 258/2001, dated 04.03.2001 under Section
468/120B/420/201, 409 IPC vide G.R. No. 623/2001 and
charge sheet No. 403/2001.

And in the matter of :

Krishna Pada Sarkar, son of Gour Pada Sarkar,
Proprietor of K.P. Sarkar & Co. a chartered Accountant

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2. *[Illegible text]*

Accountant Firm, N.S. Road, Mohanbati,
P.O. & P.S. Raiganj, Dist. Uttar Dinajpur.
... Petitioner.

- Versus -

The State of West Bengal.
... Opposite party.

In the matter of an application for
anticipatory bail under section 438 of the Code
of Criminal Procedure filed on 6.5.2003 in connection
with Raiganj P.S. Case No. 253/2001 dated 4.8.2001
under Section 463/120B/420/201/409 of the Indian
Penal Code.

In re : Krishna Pada Sarkar. ... Petitioner.
Miss Jayashree Banerjee. ... for the petitioner.
Mr. Kazi Safiullah, P.P., ...
Mr. Keshab Lal Mukherjee. ... for the State.

Upon hearing the learned Advocate for the
Petitioner and the learned Advocate for the
State and on perusal of the Case Diary, we reject
this application.

The 24/06/2003.

Amit Talukdar.
P.N. Sinha.

typed by-bde,
read by-
read by- *[Signature]*
4.6.12.

IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CRIMINAL) NO. _____ OF 2003.

IN THE MATTER OF:

Krishna Pada Sarkar
S/o Gour Pada Sarkar
Proprietor of K.P. Sarkar & Co.,
a Chartered Accountant firm,
N.S. Road, Mohanbati,
P.O. & P.S. Raiganj,
Distt. U. Dinajpur,
West Bengal.

...Petitioners

VERSUS

The State of West Bengal
through Home Department
Secretariat Writers Building,
Calcutta.

...Respondent.

SPECIAL LEAVE PETITION UNDER ARTICLE 136 OF THE
CONSTITUTION OF INDIA AGAINST THE JUDGMENT AND
ORDER DATED 24th JUNE 2003 PASSED BY THE HIGH
COURT OF CALCUTTA IN C.R.M. No. 1983 OF 2003.

To,

The Hon'ble Chief Justice of India
and His Companion Justices of the
Hon'ble Supreme Court of India

The Humble petition of petitioner above
named

MOST RESPECTFULLY SHOWETH:-

1. The present Special Leave Petition is being filed against the judgment and order dated 24th June 2003 passed by the High Court of Calcutta in C.R.M. No.1983 OF 2003 thereby rejecting the application under section 438 Code of Criminal Procedure file on behalf of the petitioner for grant of anticipatory bail in case F.I.R. no 258/2001 dated 4.8.2001 under section 468/120B/420/201/409 I.P.C. vide G.R. No.623/2001 and Charge Sheet No. 403/2001.

2. QUESTIONS OF LAW:

The following questions of the law arises for kind consideration of this Hon'ble Court namely:-

1. Whether pending investigation a Criminal Case articles seized can be handed over to the accused by the Investigating officer ?
2. Whether the petitioner should have been made a witness in the case instead of an accused or not ?
3. Whether there is ample delay in lodging the F.I.R. or not ?
4. Whether the non production of the chairmen of the society, who duly authenticated, approved and/or executed the basic documents etc., for the alleged period of offence, either as a witness or as an accused is fatal to the prosecution case ?

5. Whether Courts can peruse the case diary and pass an order in a criminal case when Charge Sheet has already been filed ?
6. Whether a non speaking order on an application under section 438 Code of Criminal Procedure is sustainable under law ?
7. Whether an accused not named in F.I.R. can be subsequently named in the Charge Sheet without there being any prima facie evidence or any disclosure statement ?
8. Whether the audit report prepared by a qualified Chartered Accountant after proper verification of annual financial statement including balance Sheet, income and expenditure account etc., with the books of account, records and documents and which was provided and duly approved by the concerned authority is an authenticated and valid document or not ?
9. Whether the audit report and annual accounts for the year 1995-1996 to 1998-1999 having been approved by the chairman and member secretary of the society and duly certified by the qualified Chartered Accountant, which is also subject to C.A.G. audit, can subsequently after a gap of five years be challenged to be wrong, by the then member secretary, under the garb of a vigilance enquiry pending against him ?
10. Whether a register society as per section 15 of the West Bengal Societies Registration Act, 1961 are

required to maintain proper books of accounts (double entry system on accrual basis) and whether such society can be permitted to operate a cash register under single entry system in violation of section 15 of the West Bengal Societies Registration Act ?

11. Whether the cash register maintained under single entry system of Accounting can be made a basis for levelling allegation against the petitioner without verifying the basic/primary documents i.e. cash/bank receipts and payment vouchers etc. with the proper books of accounts ?

12. Whether the investigating officer in the present P.S. case F.I.R. No. 258/2001 and Charge Sheet No. 403/2001 can be held to be a competent person U/S - 23 of the West Bengal Societies Registration Act, 1961 to investigate the aforesaid criminal case which basically is the outcome of another illegal and unlawful vigilance enquiry, in respect of the same matter, been conducted by the said investigating officer himself ?

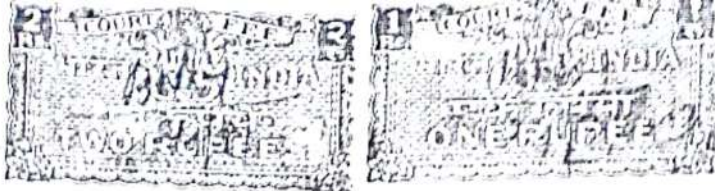
13. Whether the investigation carried out and Charge Sheet filed by the present investigating officer, Mr. P.C.Das which is biased, influenced and in violation of the principles of natural justice is sustainable in law in view of the fact that the investigating officer himself is

subordinate to the chairman of the society and Dist. vigilance officer ?

14. Whether the allegation of conspiracy with the public servants against the petitioner is sustainable under law without there being any charge against those public servants under The Prevention of Corruption Act ?

3. That the brief facts of the present case are as under:-

- (i) During the year 1999 and onwards local newspaper of Uttar Dinajpur West Bengal started reporting corruption in the Dist. Health Department involving Chief Medical Officer Health (for short C.M.O.H.) i.e. Anuj Kumar Bhattacharjee who happened to be secretary/member secretary of Disst. Leprosy Society (for short Society), Dist. Uttar Dinajpur. It is pertinent to mention that the said society is a society registered under the W.B. Societies Registration Act. The Disst. Magistrate/Dist. vigilance officer is the Chairman of the said society and therefore both the Dist. Magistrate/ Dist. vigilance officer and C.M.O.H. are acting in dual capacity as the said society is a separate entity.
- (ii) The C.M.O.H. of Disst. Uttar Dinajpur i.e. member secretary of the society was transferred as deputy director jails, W.B. in the Rank of C.M.O.H. in the month of January 2000 and Mr. Shyamal Kumar Jha took over the Charges of both C.M.O.H. Dist. Health Department,



4 dL 24/3/03

In the court of District Session
Judge at Raiganj

Ref: case No. CrIMISC 123/2003

Krishna Pada Sarkar
vs.
State of West Bengal

325/11
5/3/03

XEROX
OPERATOR

XEROX
OPERATOR

363(2)
12.2.03

BHNY

2/11.3.2003: This is an application u/s 438 of Cr.P.C. filed by the petitioner Krishna Pada Sarkar praying anticipatory bail in c/w Raiganj P.S. Case No. 258/2001 dated 4.8.2001. The L.C.R. along with the C/D is produced. Heard both sides.

Ld. Counsel for the petitioner side argued that this petitioner is a reputed Chartered Accountant and he audited the accounts for the relevant period as per documents produced before him and this petitioner at the time of audit had no scope to consider whether those documents were forged or not and that this petitioner only audited the accounts as per papers supplied to him as genuine and correct one. It is further submitted that in the charge-sheet there is no allegation that this petitioner had misappropriated any money or helped in any way in the matter of alleged misappropriation by the other accd. persons. It is also submitted that charge-sheet has been submitted in this case with allegation of Sec. 120B I.P.C. against this petitioner and even after submission of charge-sheet, any charge-sheeted accd. may make any prayer u/s 438 of Cr.P.C. In support of his contention Ld. Counsel referred one ruling reported in 1998 Cr.L.J., 1762.

Ld. P.P. opposes the prayer contending that in this case charge-sheet U/Ss. 468/120B/420/201/407/477A I.P.C. has been submitted against this petitioner and other co-accd. persons and accordingly, at this stage, the petitioner should not be allowed any anticipatory bail.

12/3/03
Petition No. E. 132
Bhny
24/3/2003

Contd..P/2

Considered the submissions of both sides along with the petition u/s 438 of Cr.P.C. and the cited ruling. Perused the materials on C/D and L.C.R. I found that charge-sheet u/ss. 468/467/471/477A/120B/420/469/201 I.P.C. has been submitted in this case against this petitioner and others. So, in the face of materials on record and the charge-sheet, I am not inclined to allow anticipatory bail to this petitioner at this stage. The cited ruling is not applicable in the given circumstances of the present case.

It is, thus, o r d e r e d

that the Crl. Misc. case is dismissed.

Let a copy of this order along with the L.C.R. and C/D be returned to the Ld. Court below.

Dictd. by me.

S.J. (R)

Session Judge (R)

RECORDED
OPERATED