

CENTRAL BUREAU OF INVESTIGATION

v.

SHRI CHANDRASWAMI @ NEMI CHAND JAIN ETC.

FEBRUARY 26, 1997

[J.S. VERMA AND B.N. KIRPAL, JJ.]

Code of Criminal Procedure, 1973:

S.438 r/w s. 482—Application for anticipatory bail—High Court, by Order dated 18.12.1996 directing C.B.I. to give three days notice to applicant before arrest—During investigation, C.B.I. gave notice to applicant—Notice challenged and High Court restraining C.B.I. from acting in pursuance to the notice—Appeals by C.B.I. challenging later orders of High Court—Held, there was no justification for making the impugned orders because of the clear language of the direction contained in the order dated 18.12.1996—The period of the required notice having expired it is for the C.B.I. to arrest the applicant or not—In the event of arrest of the applicant, the question of grant of bail to him would be considered on merits in accordance with law.

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal
Nos. 213, 14 of 1997 Etc.

From the Judgment and Order dated 18.12.96 and 14.2.97 of the Delhi High Court in Crl. Misc. No. 3039/96 and 178 of 1997.

Ashok Desai, Attorney General for India and K.N. Bhat, Additional Solicitor General, P. Parmeswaran and Pallav Shishodia for the Appellant.

R.K. Anand, Rajiv Dutta, Anoop Chaudhary, K.K. Manan, Santosh Kumar, D.R. Nigam, Vipin Nair, Arun Birbal for the Respondents.

The following Order of the Court was delivered :

Special leave granted.

These appeals by special leave are against the orders dated January 20, 1997 and February 14, 1997 passed by the Delhi High Court. These orders are a sequel to the order dated December, 18, 1996 passed in Criminal Misc. (Main) No. 3039 of 1996 passed by S.K. Mahajan, J.. That

the failure of the respondent to comply with the requirement of producing certain documents has resulted in breach of the above quoted condition No. (6) which is an additional condition. It is submitted that for this reason alone, the impugned orders should be set aside. In reply, Shri R.K. Anand, learned counsel for the respondent submitted that the offences are, in substance, bailable and the facts of the case do not justify permitting the arrest of the respondent. He, therefore, contended that these appeals be dismissed.

In our opinion, the only question for decision by us is the purport of the direction contained in the aforesaid order dated December 18, 1996, particularly the extract quoted above.

In our opinion the language of the direction is clear and admits of no ambiguity. The only right given to the respondent thereby is that of three days' notice if CBI intended to arrest the respondent. This right given to the respondent was hedged with the conditions which followed that direction including that in Clause (6) quoted above. In other words, it is not required by the CBI to show also the breach of any of the subsequent conditions in addition to giving three days' prior notice to the respondent of its intention to arrest him. Admittedly such a notice was given on January 18, 1997 and three days' period has expired long back. The aforesaid order dated December 18, 1996 does not afford any further protection thereunder to the respondent. The period of the required notice having expired, it is for the CBI to take the decision whether to arrest the respondent or not. In case the arrest is effected, the question of grant of bail to the respondent would then be a matter for consideration on merits in accordance with law.

We are constrained to add that there was no justification for making the impugned orders because of the clear language of the direction contained in the orders dated December 18, 1996.

Consequently, these appeals are allowed in the above manner and the impugned orders dated January 20, 1997 and February 14, 1997 are set aside.

R.P.

Appeals allowed.