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HIGH COURT OF CHHATTISGARH, BILASPUR

MCRC No. 4643 of 2017

- Aditya Singh S/o Vijay Kumar Singh, Aged About 41 Years R/o Street No. 2, Smriti Nagar, Plot No. 306, Police Station , Smriti Nagar Chowki, District- Durg, Chhattisgarh **--- Petitioner**

Versus

- Union of India Through The Railway Protection Force (R P F), Durg, District Durg, Chhattisgarh. **--- Respondent**

For the applicant : Shri Kanak Tiwari, Sr. Advocate with Mr. Jitendra Pali, Advocate

For the State : Shri Abhishek Sinha, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

C.A.V. ORDER

(Reserved on 02.08.2017)

(Delivered on 18.08.2017)

1. This is first bail application filed under Section 439 of the Code of Criminal Procedure seeking grant of regular bail to the applicant in connection with Crime No.1245 of 2017 registered at P.S. Railway Protection Force (RPF), Durg (C.G) for the offence punishable under Section 143 of Railways Act, 1989.

2. As per the prosecution case, on 15.06.2017, the Railway Protection Force having received an information that the applicant is engaged in illegal sale and purchase of railway E-Tickets a raid was conducted in the shop of applicant. On such raid being made, 23 E-Tickets issued by IRCTC were found. It is alleged that the e-tickets were found to be issued by using different fake IDs which did not belong to the

applicant. The applicant was given notice u/s 91 of Cr.P.C. As no satisfactory documents were produced, the applicant was arrested and the Computer, Printer, CPU etc., were seized. It is the case of prosecution that the applicant used to issue the rail e-tickets through IRCTC by using different IDs of the persons and those tickets were being commercially sold for his financial benefits. Since the tickets along-with cash and other goods such as Computer, CPU, Monitor etc., were seized as such the offence is alleged to have been committed u/s 143 of the Railways Act, 1989 (hereinafter referred to as the Act of 1989).

3. Shri Kanak Tiwari, learned senior advocate appearing for the applicant would submit that without prejudice to the rights of the applicant even if the e-tickets were seized it will not amount to offence as enumerated u/s 143 of the Railways Act, 1989. It is contended that the e-tickets were issued by IRCTC and it is not at all a case that fake tickets have been issued. It is further contended that the money has passed into the account of Railways through others bank accounts and no cash transaction has actually been effected with the Railways. Therefore, it is stated that the incident of fraud or selling fake tickets do not arise at all. It is stated that the tickets which were issued were also not to the persons of the fake identify or any fictitious persons but it was issued to the genuine persons who had approached the applicant to get the tickets and money has been paid through their account only. Therefore, no criminal act can be attributed to the applicant.

4. He further submits that reading of section 143 of Railways

Act along-with sections 179(2), 180, 180-A 180-D & 180-F would show the intention of the legislature and they are bailable offences. Referring to section 143(2) of the Act, 1989 it is stated that it prescribes the punishment of imprisonment for a term which may extend to 3 years or with fine or with both, therefore, the entire object of the Legislature is not meant to merely impose imprisonment but in the alternative by way of fine, certain recovery can be made. It is stated that the entire proceedings were carried out by the Railway Protection Force and the cognizance cannot be taken unless a complaint is filed and the provisions of Railways Act would show that after arrest the Railway Officer has power to release the person arrested on bail. Therefore, necessarily it would fall under the category of bailable offence. In this context, he referred to different sections of IPC which are enumerated in First Schedule of Cr.P.C., and submits that though certain offences are punishable for 3 years or more and cognizable yet they are bailable. Likewise Sections 218, 222, 293, 317 and 489-C of IPC etc., are bailable. He further referred to a decision of Delhi High Court reported in ***2005 (83) DRJ 92 – Munna kumar Vs. State through NCT of Delhi*** and submits that if the language of section 143 is read along-with section 180-D of the Railways Act, the offence is held to be bailable. Further learned counsel referred to a decision rendered by Kerala High Court in C.R.L.M.C.No.1991 of 2016 dated 22nd September, 2016 and submits that according to the said judgment, the use of internet medium registered in the name of a person to issue tickets to a third party is not one

contemplated under section 143 for the purpose of considering it as an offence and it has been further held that even misusing a user ID for purchasing a ticket by genuine person will not amount to offence as contemplated under section 143 of the Act, therefore, in case of issue of E-Tickets through IRCTC, section 143 of the Railways Act do not attract at all.

5. Learned Senior Counsel further submits that while the Evidence Act was amended, the Legislature was conscious enough to amend the other sections to make the admissibility of the electronic evidence but in respect of Railways Act, nothing like nature was amended, therefore, the offence would not at all be made out. He prays that the applicant is in jail since 15.06.2017, therefore, he may be enlarged on bail.

6. Per contra, Shri Abhishek Sinha, learned counsel for the respondent opposes the arguments and submits that for the offence u/s 143 of the Act, 1989 the punishment prescribed is imprisonment of a term which may extend to 3 years or with fine or with both. Therefore, it would fall in Part II of the first schedule to Cr.P.C., which prescribed that if the offence is punishable with imprisonment of 3 years then it would be cognizable and non-bailable. He further referred to a case law reported in ***(2011) 14 SCC 1 Om Prakash V. Union of India*** and submitted that if the punishment is not less than 3 years for an offence, then only it can be termed as bailable but if the offence is punishable with imprisonment of 3 years and upwards, then it would be non-bailable. It is further contended that the offence has been committed by

the applicant and he may not be released on bail.

7. Having heard the rival submission of the parties, the question which falls for determination is as to whether the the offence committed u/s 143 (2) of the Railways Act, 1989 wherein punishment of imprisonment has been provided which may extend to 3 years or with fine or with both would be bailable or not ?

8. For the sake of brevity, section 143 of the Railways Act 1989 is reproduced herein-below:

> **143**. Penalty for unauthorised carrying on of business of procuring and supplying of railway tickets.- (1) If any person, not being a railway servant or an agent authorised in this behalf, –
>
> (a) carries on the business of procuring and supplying tickets for travel on a railway or for reserved accommodation for journey in a train; or
>
> (b) purchases or sells or attempts to purchase or sell tickets with a view to carrying on any such business either by himself or by any other person,
>
> he shall be punishable with imprisonment for a term which may extend to 3 years or with fine which may extend to ten thousand rupees, or with both, and shall also forfeit the tickets which he so procures, supplies, purchases, sells or attempts to purchase or sell:
>
> Provided that in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, such punishment shall not be less than imprisonment for a term of one month or a fine of five thousand rupees.
>
> (2) Whoever abets any offence punishable under this section shall, whether or not such offence is committed, be punishable with the same punishment as is provided for the offence.

9. Further reading of section 179 of the Railways Act would show that it prescribes that if any person commits any offence mentioned in Sections 137 to 139, 141 to 147 and 153 to 157, 159 to 167 and 172 to 176, he may be arrested without warrant or other written authority by the officer authorised by a notified order of the Central Government. The central Government has notified all the officers of above the rank of Assistant Sub-inspector in the Railway Protection Force as the officer authorised for the purpose of this Act vide S.O.No.593 (E) dated 17th May 2004. Thereby a plain reading of section 179 shows that it would make out cognizable offence. Section 179(4) prescribes that any person so arrested under this section shall be produced before the nearest Magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate. For the sake of convenience, section 179(2)(3) & (4) is quoted below:

> "**179. Arrest for offence under certain sections** .-- (1) xxx xxx xxx
>
> (2) If any person commits any offence mentioned in Section 137 to 139, 141 to 147, 153 to 157, 159 to 167 and 172 to 176, he may be arrested, without warrant or other written authority, by the officer authorised by a notified order of the Central Government.
>
> (3) The railway servant or the police officer or the officer authorised, as the case may be, may call to his aid any other person to effect the arrest under sub-section (1) or sub-section (2), as the case may be.
>
> (4) Any person so arrested under this section shall be produced before the nearest

Magistrate within a period of twenty-four hours of such arrest exculding the time necessary for the journey from the place of arrest to the court of the Magistrate."

10. In the facts and circumstances of the case, further sections 180-A, 180-D & 180-F of the Act are also relevant which reads as under:

180-A. Inquiry by officer authorised to acertain commission of offence.-- For ascertaining facts and circumstances of a case, the officer authorised may make an inquiry into the commission of an offence mentioned in sub-section (2) of Section 179 and may file a complaint in the competent court if the offence is found to have been committed.

180-D. Inquiry how to be made against arrested person. .-- (1) When any person is arrested by the officer authorised for an offence punishable under this Act, such officer shall proceed to inquire into the charge against such person.

(2) For this purpose, the officer authorised may exercise the same powers and shall be subject to the same provisions as the officer in charge of a police station may exercise and is subject to the provisions of the Code of Criminal Procedure, 1973 (2 of 1974), when investigating a cognizable case:

Provided that –

(a) if the officer authorised is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused person, he shall either admit him to bail to appear before a Magistrate having jurisdiction in the case, or forward him in custody to such Magistrate;

(b) if it appears to the officer authorised that there is not sufficient evidence or reasonable ground of suspicion against the accused person, he shall release the accused person on his executing a bond, with or without sureties as the officer authorised

may direct, to appear, if and when so required, before the Magistrate having jurisdiction.

180-F. Cognizance by Court on a complaint made by officer authorised.-- No court shall take cognizance of an offence mentioned in sub-section (2) of Section 179 except on a complaint made by the officer authorised.

11. In the instant case, it is not in dispute that the entire proceedings including search and seizure as also the arrest were carried out by the Railway Protection Force. Reading of section 180-A purports that the authorised officer may make an inquiry into the commission of an offence mentioned in sub-section (2) of section 179 and may file a complaint in the competent court, if the offence is found to have been committed. Therefore, reading of section 180-A would show that it is akin to the degree of satisfaction of framing of charge by a court, while trying an offence under IPC. In the Railways Act, 1989, the same right has been delegated under the Statute to an authorised officer which means that the authorised officer after having satisfied to the effect that the offence has been 'committed' may file complaint in the competent Court.

12. Now the question surfaces that if the arrest has already been made by virtue of section 179(2) of the Act of 1989 what would be the fate of the person arrested if the the officer after arrest forms an opinion that no complaint can be filed for want of necessary evidence. The said satisfaction can be arrived at after investigation naturally. So what would be the fate of person arrested till such investigation is made. Of course, the provisions of section 179(4) of the Railways Act

mandates to produce the person before the Magistrate. However, apart from it, after the arrest is made another section of Railways Act comes into play i.e., section 180-D.

13. This necessarily takes us to read the provisions of Section 180-D of the Act, 1989. Sub-section (2) of Section 180-D provides that if the officer authorised is of the opinion that there is sufficient evidence or reasonable ground of suspicion against the accused, then he can grant him bail so as to allow him to appear before the Magistrate or forward him to the custody of the magistrate. As per section 180F, it puts a rider that no Court shall take cognizance of an offence mentioned in sub-section (2) of section 179 except on a complaint filed by the authorised officer. Therefore, if an authorised officer arrests a person then necessarily he has the right to grant him bail to his discretion according to the degree of commission of offence, and allegation and the evidence available.

14. Now if we refer to section 143 it provides for punishment of imprisonment for a term which may extend to 3 years or with fine which may extend to Rs.10,000/- or with both. Therefore, the alternative punishment has been provided as against the imprisonment by imposing punishment of fine only. The question is merely because the punishment of imprisonment provided for is for a term which may extend to 3 years does it mean that it will fall in Entry-2 of part II of 1st schedule of the Code of Cr.P.C., and not in Entry-III thereof. Therefore, to appreciate this aspect, it may be necessary to examine the scheme of Railways Act. It provides for punishment of imprisonment which may extend to 3 years or

with fine or with both. Likewise if we revert back to the provisions of IPC, the offences punishable under Sections 212, 218, 219, 317, 325 354A, 354-D, 389 of IPC wherein though the punishment prescribed is imprisonment of 3 years or more or with fine or with both but those offences have been made bailable. Therefore, in the first part of the schedule of Cr.P.C., the punishment prescribed is imprisonment, which may extend to 3 years or with fine or with both for those offences and even they have been made bailable. In that sense, the scheme of the Code is indicative of the legislature intention which is to be examined by putting the Railways Act at parallel by looking into eye to eye with each other. The proviso to Section 180-D of the Railways Act provides the power to the authorised officer to grant bail. The same is subject to filing of complaint and the scheme of the Act is that section 143 is primarily to avoid unauthorised sale of railway tickets other than by the Railway employees or the agents. Therefore, taking into the aspects of the punishment provided along-with the statutory mandate u/s 180-A, 180-D and 180-F of the Railways Act, I have no hesitation to hold that the offence in the nature of section 143(2) wherein fine is also contemplated shows the legislative intent as the officer is also given power to grant bail. In such eventuality the offence u/s 143(2) of Railways Act cannot be isolated to hold that since the punishment of imprisonment as prescribed may extend to 3 years, it would be non-bailable and would fall in category II of Part II of the first Schedule of Cr.P.C.

15. At this juncture, if we refer to section 436 of Cr.P.C., it

mandates that a person when is arrested for other than non-bailable offence and the officer is prepared to grant bail while in custody, such person shall be released on bail. Meaning thereby the police officer has been authorised to release a person if he is arrested for a non bailable offence. Likewise in similar circumstances, if the proviso to section 180-D of the Act are examined, the legislature has authorised the officer to release the person arrested, therefore, the intention of the Legislature can be very well inferred that the offence of like nature is bailable when it is considered with the punishment prescribed u/s 143(2) of the Railways Act. Therefore, under the facts and circumstances of the present case, I have no hesitation to hold that the offence committed u/s 143(2) is bailable offence and I am in agreement with the preposition as has been held in ***2005 (83) DRJ 92 – Munna kumar Vs. State through NCT of Delhi (supra)*** that the offence u/s 143 of the Railways Act is a bailable offence.

16. Now coming to the question of bail, the case diary shows that the applicant has already been arrested on 15.6.2017 and necessary seizure has already been made. As appears, the documentary and other substantial evidence have already been collected. Therefore, in view of the above discussion and looking to the nature of allegations and the period of custody of the applicant as also the fact the fact that the offences are triable by the JMFC, I am inclined to release the applicant on bail.

17. Accordingly, the bail application is allowed and the applicant is directed to be released on bail on his executing a personal

bond in sum of Rs.25,000/- with one surety in the like sum to the satisfaction of the trial Court for his appearance as and when directed by the said Court.

Cc as per rules.

Sd/-
GOUTAM BHADURI
JUDGE

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