IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.10297 of 2016

Arising Out of PS.Case No. -74 Year- 2014 Thana -KOTWALI District- MUNGER
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1. Tarique Mahmood Son of Mahmood Hasan Resident of Village - Doghra, Police Station - Jale, District - Darbhanga.

.... Petitioner/s

Versus

1. The State of Bihar through Vigilance Commissioner, Economic offence Unit, Bihar, Patna.

.... Opposite Party/s
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Appearance :
For the Petitioner: Mr. Kanhaiya Pd. Singh, Sr. Advocate
Mr. Sanjeev Kumar
Mr. Raghwendra Kumar
For the EOU : Mr. Rajeev Ranjan Pd.
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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER

6 28-06-2016 Heard both sides.

The petitioner apprehends his arrest in Special case No. 37(A) of 2014 arising out of Kotwali (Munger) P.S. case No. 74 of 2014 under Section 406, 409, 420, 467, 468, 471 and 120B of the Indian Penal Code.

The Excise Superintendent, Munger, on the basis of audit report, alleged that Sri Yogendra Kumar, Head Clerk and two others, in collusion with licensees, substituted fake challan in place of original and so false deposits were made in the bank and thereby they misappropriated and defalcated about Rs.1,70,82,000/-.

Sri Kanhaiya Prasad Singh, the learned senior counsel for the petitioner, submits that the petitioner is not named in the FIR. The scam was going on from before. The petitioner was made Incharge Excise Superintendent of Munger since 26.07.2013 to 12.09.2013 and no challan was presented before the petitioner nor did the petitioner put any signature on any of the challans during the period of his Incharge-ship as Superintendent of Excise, Munger. It is submitted that petitioner, after being made Incharge Excise Superintendent, issued a letter to maintain register of deposit of challan in accordance with law. It is further submitted that there is no material on record nor any material has been collected during the investigation that petitioner had any knowledge about the scam or he connived with the Head Clerk or any other official in scam and misappropriated money. Excise Inspector, Kumar Ravi Shankar is also not named in the FIR but he has been made accused as he put initials on some of the original challans. It was pointed out that original challan was substituted by duplicate challan by the Head Clerk and other officials showing false deposit in the bank and on the basis of which Kumar Ravi Shankar was granted anticipatory bail vide order dated 20.05.2016 passed by a bench of this court in Cr. Misc. No. 13207 of 2016 and the case of petitioner stands on better footing as the petitioner did not put initial on any original challan or duplicate challan nor any material has been collected to show the involvement of the petitioner in the alleged scam. At best the petitioner can be held responsible for dereliction of duty that too for not checking the challan but the rules says that 10% of the challan may be verified by the Superintendent, Excise at the end of every financial year.

Mr. Rajeev Ranjan Prasad, the learned counsel appearing for the E.O.U. has submitted that, of course, the petitioner was Incharge for only 46 days but he, being the head of the office, is responsible for the scam but at the same time he could not be able to point out as to whether any challan was produced before the petitioner or petitioner had any knowledge about the on going scam at the office level as the Head Clerk and other officials used to replace original challan with duplicate challan showing inflated deposit of money although less amount was deposited in the bank.

Having considered the fact that petitioner was Incharge for only 46 days and there appears to be no material to show that petitioner was having any knowledge of the scam or any challan or bank scroll was produced before him and similarly situated accused Kumar Ravi Shankar has already been enlarged on anticipatory bail, the above named petitioner, in the event of his arrest or surrender before the learned court below within a period of four weeks from the date of receipt / production of a copy of this order, is directed to be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Special Judge, Vigilance-II, Patna in Special case No. 37(A) of 2014 arising out of Kotwali (Munger) P.S. Case No. 74 of 2014, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

(Prabhat Kumar Jha, J)

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