IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.22899 of 2017

Arising Out of PS.Case No. -5 Year- 2015 Thana -C.B.I CASE District- PATNA

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Pushpendra Kumar Suman, Son of Sri Anant Ram Ahirwar, Resident of Hare Krishna Colony, P.O. +P.S. - Sasaram, District Rohtas.

.... Petitioner

Versus

The Union of India through CBI

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Ajay Thakur, Adv.
Mr. Ravi Kumar, Adv.

For the Opposite Party/s : Mr. Bipin Kumar Sinha (SC,CBI)

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL ORDER

4 02-08-2017 Heard Sri Ajay Kumar Thakur, learned counsel, assisted by Sri Ravi Kumar, learned counsel for the petitioner and Sri Bipin Kumar Sinha, learned Standing Counsel, Central Bureau of Investigation.

2. The present petition under Section 438 of the Code of Criminal Procedure has been filed by the petitioner Pushpendra Kumar Suman, who was at the relevant time Chief Manager, Canara Bank at Sasaram, pursuant to order dated 11.04.2017 passed by the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) M.P.5915-5916/2017. Earlier the petitioner, much after submission of chargesheet by the Central Bureau of Investigation, in a case i.e. R.C. Case no.05/S/2015 registered for the offence under Section 120(B) read with Sections 406/420/468/471 of the

Indian Penal Code and Section 13(1)(c) & (d) of the Prevention of Corruption Act,1988, had prayed for grant of anticipatory bail vide Cr.Misc.No.19709 of 2016, which was filed on 02.05.2016. Firstly on 20.05.2016, when Cr.Misc.No.19709 of 2016 was taken up, on the ground of ailment of Sri Ashutosh Ranjan Pandey, learned counsel for the petitioner, a prayer was made for adjournment. However, Sri Sanjay Kumar, learned counsel for the Central Bureau of Investigation had argued that in the capacity of Branch Manager of Canara Bank, the petitioner had put the bank to the loss of several crores by way of extending loan to fictitious persons. The case was adjourned and directed to be listed after Summer Vacation, 2016. While directing for listing the case after Summer Vacation, 2016, it was directed that the matter may be treated as part-heard. After Summer Vacation, 2016 the case was again taken up on 04.07.2016, however on repeated calls, none appeared on behalf of the petitioner and, as such, the anticipatory bail petition i.e. Cr.Misc.No.19709 of 2016 stood dismissed on 04.07.2016 due to non-prosecution. To the reasons best known to the petitioner for several months, no step was taken to get the anticipatory bail petition i.e. Cr.Misc.No.19709 of 2016 restored.

3. After lapse of more than five months on 13.12.2016 a restoration petition vide Cr.Misc.No.53622 of 2016 was filed, which was taken up on 21.12.2016. At the time of hearing of restoration petition i.e. Cr.Misc.No.53622 of 2016, the Court desired that learned counsel for the petitioner may address the Court on merit of the case and, as such, the case was argued and after examining the matter and considering the seriousness of the allegation, the Court was of the opinion that by way of restoring the earlier petition, no purpose would be served and, as such, the restoration petition was dismissed on 21.12.2016. It is reiterated that neither in the main petition any fact was disclosed regarding grant of anticipatory bail to co-accused nor in the restoration petition or at the time of argument on restoration petition, any fact was stated that one of the co-accused was granted anticipatory bail . However, on perusal of the order of the Hon'ble Supreme Court, which has been brought on record as Annexure-3 to the petition, it appears that before the Hon'ble Supreme Court, it was complained that co-accused, against whom also there was serious allegation, was extended the privilege of anticipatory bail, but the petitioner's prayer has been rejected without appreciating the facts of the case. At this juncture, it is necessary to note that co-accused, namely, Kumar Narottam Suman, who was granted privilege of anticipatory bail on 06.10.2016 by a Co-ordinate Bench of this Court, whereas first Anticipatory Bail Petition i.e.

Cr.Misc.No.19709 of 2016 of the petitioner was dismissed due to non-prosecution on 04.07.2016.

4. Before hearing this matter, this Court had summoned record of Cr.Misc. No.19709 of 2016 as well as restoration petition i.e. Cr.Misc.No.53622 of 2016. In the restoration petition, which was filed in the month of December, 2016, nothing was indicated as to whether co-accused was granted privilege of neither anticipatory bail nor any plausible explanation was given in the petition for filing restoration petition belatedly. It would be appropriate to incorporate the entire facts disclosed in the restoration petition, which is as follows:

> ***" 1. That the present application is being filed for restoration of Cr.Misc.No.19709 of 2016 which has stood dismissed for default by order dated 04.07.2016 passed by Hon'ble Mr.Justice Rakesh Kumar due to non appearance before the Hon'ble Court when the case was called out.***
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> ***2. That the petitioner has never moved at any early stage for the relief prayed for in this petition.***
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> ***3. That the petitioner had moved before this Hon'ble Court in Cr.Misc.No.19709 of 2016 with a prayer for grant of anticipatory bail in connection with R.C.05/S/2015 under section 120B r/w section 406/420/468/471 of the IPC.***
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> ***4. That it is humbly submitted that when the case was called out due to unfortunate circumstances the***

counsel could not appear as such Hon'ble Court was pleased to dismiss the case due to default of non prosecution.

5. That under unfortunate circumstances the counsel for the petitioner who was on legs on another Hon'ble Bench as such could not appear on time before Hon'ble Court.

6. That there is no deliberate latches on the part of the petitioner rather under unfortunate circumstances the counsel for the petitioner was on legs in another court as such could not appear on time therefore the case stood dismissed for default.

7. ***That if the case is not restored the petitioner shall suffer irreparably."***

5. It is reiterated that at the time of restoration, while the Court had asked the learned counsel for the petitioner to address the Court on merit of the case, this fact was not brought to the notice of the Court that co-accused was granted privilege of anticipatory bail. The Court after being satisfied with the materials was not inclined to extend the privilege of anticipatory bail and, as such, it was futile exercise to allow the restoration petition and, as such, restoration petition was dismissed.

6. The Hon'ble Supreme Court by its order dated 11.04.2017 was pleased to permit the petitioner to approach the High Court and plead for grant of anticipatory bail on the foundation of parity and, as such, without discussing any further thing regarding past event, the Court asked learned counsel for the petitioner to argue the case on the question of parity. However, it appears that co-accused Kumar Narottam Suman was extended the privilege of anticipatory bail by order dated 06.10.2016 in Cr.Misc.No.13027 of 2016 on persuasion by learned counsel for the petitioner that the case was still under investigation and this was the reason that in the order dated 06.10.2016 passed in Cr.Misc.No.13027 of 2016, the Co-ordinate Bench of this Court had recorded as follows:

> ***"However, learned Senior Counsel for the petitioner has given an undertaking that the petitioner shall, at all, material times appear before the Investigating authorities, the proceeding which is pending in the Bank and also in the Court below on submission of chargesheet."***

And, thereafter, the Co-ordinate Bench in the same order in the last but one paragraph has observed as follows:

> ***"It is also made clear that the petitioner shall appear in the Court below on submission of chargesheet and collect the police papers."***

7. It appears from the order dated 06.10.2016 passed in Cr.Misc.No.13027 of 2016 that an incorrect information was given to the Co-ordinate Bench on behalf of the petitioner Kumar Narottam Suman since in the case after investigation, chargesheet was already submitted on 31.12.2015. The chargesheet was submitted after obtaining prosecution sanction against both accused persons and chargesheet was seen by the learned Special Judge on 02.01.2016, which is evident from Annexure-5 to the present petition.

8. Now, on the question of parity, Sri Thakur, learned counsel for the petitioner has argued that case of the petitioner is almost similar to the case of co-accused Kumar Narottam Suman. Learned counsel for the petitioner has drawn my attention to running page-102, which is internal page-18 of the chargesheet, wherein it has been indicated that investigation disclosed that the accused Pushpendra Kumar Suman (petitioner) functioned as Chief Manager of Canara Bank at Sasaram from 17.06.2014 to 17.06.2015. Investigation also disclosed that accused Kumar Narottam functioned as Agriculture Extension Officer of Canara Bank at Sasaram from 10.08.2011to 06.07.2015. He has further drawn my attention to running page-105, internal page-21 of the chargesheet, which indicates that investigation further disclosed that accused Pushpendra Kumar Suman(Petitioner) as Chief Manager and accused Kumar Narottam Suman as Agriculture

Extension Officer of Canara Bank, Sasaram sanctioned and disbursed produce loans to the borrowers / Farmers.

9. Learned counsel for the petitioner submits that the facts disclosed in the chargesheet suggest that both, petitioner as well as Kumar Narottam Suman sanctioned and disbursed produce loans. He has further argued that as per bank instruction, Chief Manager as well as Agriculture Extension Officer of Canara Bank, both were authorized to sanction loans. Accordingly, it has been argued that the case of the petitioner is exactly similar to the case of co-accused Kumar Narottam Suman, who has been extended the privilege of anticipatory bail and, as such, the petitioner on parity deserves the same relief.

10. However, Sri Bipin Kumar Sinha, learned Standing Counsel, Central Bureau Investigation submits that the fact that co-accused Kumar Narottam Suman was functioned as Agriculture Extension Officer, Canara Bank, is itself enough to distinguish the case of the petitioner, since the petitioner was Chief Manager of Canara Bank, from where produce loan was sanctioned and in the said episode, the bank has suffered loss of more than seven crores rupees. Sri Sinha , learned counsel for the Central Bureau of Investigation has drawn my attention to the prosecution sanction order issued by the competent authority which has been brought on record of the petition from running page 139 to 143. Sri Sinha has specifically drawn my attention on last but one paragraph of page no.143 of the sanction order and submits that the case of the petitioner was not exactly similar to the case of co-accused Kumar Narottam Suman. He has referred to last paragraph of page-143, which indicates ***" It is further alleged that accused Shri Pushpendra Kumar Suman fraudulently and dishonestly allowed transfer of loan proceeds from the borrowers accounts to the SB Accounts of accused Shri Kaushik Gupta maintained with Allahabad Bank ad United Bank of India, Kolkata to the SB Accounts of Shri Ritesh Patel, the son of accused Shr Choudhary Rajendra Singh and also to the current Account of M/S Nakshatra Impex maintained with the same b branch from where the funds were subsequently transferred to the personal accounts of accused Shri Kaushik Gupta, Shri Niladari Gupta and their father Shri Ranjit Gupta, who utilised the fund for the purpose other than the purpose for which the produce loans were sanctioned to the non eligible borrowers."***

11. Besides hearing learned counsel for the parties, I have perused the entire materials including chargesheet, which has been brought on record as Annexure-5 to the petition. On going through the chargesheet, it is evident that though produce loan was required to be sanctioned to the Agriculturists, the loan in a fraudulent manner was sanctioned to daily-wagers and other persons, who were not at all entitled to get such benefits. Besides this, number of accounts were opened by way of collecting photographs, I.D. Cards etc. However, introducers, who were shown as introducers of Accounts, had denied to be introducers for opening such accounts. Since the petitioner was Chief Manager and incharge of the Bank, it was difficult to come to a conclusion that case of the petitioner is exactly similar to the case of co-accused i.e. Agriculture Extension Officer, Kumar Narottam Suman, who has been granted privilege of anticipatory bail.

12. Considering the fact that the case of the petitioner is not exactly on similar footing to the case of co-accused as well as the fact that public money to the tune of Rs.7 crores was misappropriated conspiring with private accused persons, the Court is of the opinion that it is not a fit case for extending the privilege of anticipatory bail. Moreover, fact remains that co-accused was extended the privilege of anticipatory bail primarily on the ground as if chargesheet was not submitted. However, fact remains that in the present case, after thorough investigation chargesheet was submitted in the month of December, 2015 and the same was seen by the learned Special Judge on 2nd January, 2016. This Court is also of the opinion that once after investigation, prima facie case is made out against an accused, in normal course, one may not be extended the privilege of anticipatory bail. Since the Hon'ble Supreme Court had observed to examine the case on parity, I have examined the case minutely and have come to the conclusion that the petitioner's case is not exactly on similar footing to the case of co-accused, who has been granted bail in anticipation of his arrest.

13. Accordingly, the prayer for grant of bail in anticipatory of arrest of the petitioner is rejected.

The petition stands dismissed.

(Rakesh Kumar, J)

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