IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9690 of 2019

Arising Out of PS. Case No.-16 Year-2017 Thana- C.B.I CASE District- Patna

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MD. SARFARAZ UDDIN S/o Md. Neezamuddin resident of Mohalla-Vikramshila Nagar, Kahalgaon, P.S-Kahalgaon,

... ... Petitioner/s

Versus

The C.B.I. through the Superintendent of Police, CBI/ACUV/ACH/New Delhi

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kanhaiya Prasad Singh, Sr. Advocate.
Mr. Sanajeev Kumar, Advocate
Mr.Rajeev Shekhar, Advocate
Mr. Pratik Mishra, Advocate.

For the Opposite Party/s : Mr.Bipin Kumar Sinha, AC to CBI

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

11 27-11-2019 Instant petition under Sections 439 and 440 of Criminal Procedure Code has been moved for grant of bail in Special Case No. 8 of 2017 (RC-16A of 2017) arising out of F.I.R. No. 512 of 2017, dated 12.08.2017 registered at Police Station Kotwali, Bhagalapur under Sections 409, 420, 467, 468, 471, 120B read with Section 34 of the Indian Penal Code and Sections 13(2), (13(1)(c) and 13(1)(d) of the Prevention of Corruption Act.

I have heard learned counsel for the petitioner and learned counsel appearing on behalf of the CBI. I have also perused the relevant record of the case, necessary for adjudication of this petition.

The Court is dealing with the case where investigation conducted by the Central Bureau of Investigation, *prima facie*,

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revealed complicity of, amongst others, present accused bail applicant Md. Sarfaraz Uddin, which led to the filing of challan before the appropriate Court, under the provisions of Sections 120B, 409, 420, 468 and 471 of the Indian Penal Code and Section 13(2) read with 13(1)(c) & 13(1)(d) of the Prevention of Corruption Act.

The petitioner was arrested on 25.09.2018 whereafter he is suffering incarceration.

Undisputedly, this Court is dealing with the case of economic offences.

It is seen that on 02.08.2018, a Co-ordinate Bench of this Court dismissed a similar petition observing that the case pertains to what is notoriously known in the State of Bihar as the "Srijan Scandal" and that the present applicants had a vital role to play therein. It is not a case of negligence and/or dereliction of duty. To the contrary, *prima facie*, that of causing wrongful loss with an intent to cheat and misappropriate public money. Also, without proper authorisation or preparation of any paper, account of Co-operative Bank being opened in different Banks.

Having perused the material on record, this Court finds the case made out by the prosecution to be serious and grave. Different cheques of crores of rupees were sent by the petitioner

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to the Bank to be deposited in the account for particular transaction, but the money was transferred into the account of SMVSSL and all this continued for all were involved and the money kept into the account was in relation to acquisition proceedings for which, perhaps, at that point of time, no payments. It was the petitioner, who asked his co-conspirators and also officials of the Co-operative Bank to process the file for opening the account with the Bank and all this, purportedly done on the forged letter proposing payment of higher rate of interest.

It is seen that offences are serious in nature and fall under the category of economic offences, which constitute a class separate and distinct from the ordinary crime and such deep rooted conspiracies of economic offences, involving huge loss of public funds needs to be viewed seriously for its effect in the country as a whole and posing serious threat to the financial health of the country.

It is in this backdrop, considering the fraudulent diversion of Government funds in the account, this Court, despite the petitioner being in jail since 25.09.2018 and the challan having been presented in court, does not find it a fit case for grant of bail.

Prima facie, documents prepared by the petitioner stands

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examined through the expert and there is material on record indicating the petitioner’s complicity in the crime.

There is no change in the circumstances, from the date of rejection of earlier bail, warranting grant of privilege by the Court.

The facts as culled out in the final report read as under:

That Arun Kumar, District Welfare Officer, Bhagalpur and Late Mahesh Mandal, Clerk/Nazir, District Welfare Office, both being public servants, entered into a criminal conspiracy with late Manorama Devi, Secretary, Srijan Mahila Vikas Sahyog Samiti Ltd., Md. Sarfaraj-Uddin (present petitioner), Officer, Bank of Baroda, Bhagalpur and others to cheat and fraudulently misappropriate Rs. 6 crore from account of District Welfare Office, Bhagalpur by using forged documents.

It is further alleged that in furtherance of that conspiracy to cheat and misappropriate, Arun Kumar, while working as District Welfare Officer, Bhagalpur, issued a cheque No. 333574 dated 08.11.2016 for an amount of Rs. 6 crore from A/c No. 120000210000734 of District Welfare Office, Bhagalpur at Punjab National Bank (PNB), Barari Branch, Bhagalpur. The cheque was in favour of “Zila Kalyan Padadhikari, Bhagalpur” and was issued for transferring Rs. 6 crore to a new account no.

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10010100016165 which was opened in Bank of Baroda, Bhagalpur. There is no justifiable reason in any file or on record for this transfer of fund from one account to another account.

It is further alleged that cheque was processed in Bank of Baroda, Bhagalpur through common deposit slip dated 08.11.2016.

It is further alleged that cheque No. 333574 dated 08.11.2016 for an amount of Rs. 6 crore was inn favour of “Zila Kalyan Padadhikari, Bhagalpur” but it was credited to A/c 10010100013517 of Srijan Mahila Vikas Sahyog Samiti Ltd. (hereinafter referred to as SMVSSL) on 10.11.2016.

It is further alleged that at the reverse side of cheque No. 333574 dated 08.11.2016 of Rs. 6 crore, Mrs. Manorama Devi affixed a stamp of Srijan Mahila Vikas Sahyog Samiti Ltd with narration “VASOOLI HONE PAR JAMAKARTA KE KHATE KO CREDIT KIYA JAYEGA” and signed the same. Md. Sarfarajuddin (petitioner), Officer of Scale III, in Bank of Baroda, Bhagalpur despite knowing the fact cheque is in favour of “Zila Kalyan Padadhikari, Bhagalpur”, prepared vouchers (common deposit slip dated 08.11.2016) for crediting it in A/c 10010100013517 of Srijan Mahila Vikas Sahyog Samiti Ltd.

It is further alleged that the bank vouchers (common

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deposit slip dated 08.11.2016) vide which cheque No. 333574 dated 08.11.2016 of Rs. 6 crore was processed and credited into account No. A/c 10010100013517 of Srijan Mahila Vikas Sahyog Samiti Ltd. was filled by Md. Sarfarajuddin (the present petitioner), Officer of Scale III, in Bank of Baroda, Bhagalpur.

It is further alleged that after crediting Rs. 6 crores on 10.11.2016 in the account No. 10010100013517 an amount of Rs. 508 crore was transferred Bhagalpur on 29.11.2016 through RTGS vide cheque No. 654021 dated 29.11.2016 to account No. 6459455501 of the District Land Acquisition Office at Indian Bank. Further an amount of Rs. 7 lacs was transferred to account No. 10010100016162 of District Land Acquisition Office at Bank of Baroda, Bhagalpur vide cheque No. 654422 on 28.12.2016 and an amount of Rs. 15 lacs was transferred to account No. 10010100015889 of Executive Engineer, District Urban Development Agency at Bank of Baroda, Bhagalpur on the same day.

It is further alleged that cheque No. 654021 dated 29.11.2016 and its associated Bank slips/voucher was filled by Md. Sarfarajuddin (the present petitioner). The cheque Nos. 654422 worth Rs. 7 lacs and 654421 worth Rs. 15 lacs and their associated vouchers have been filled in the handwriting of Atul

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Raman, Officer of Bank of Baroda. The writings on these cheques and vouchers have been identified by Mrs. Shweta Kumari, Officer of Bank of Baroda.

It is further alleged that Arun Kumar received pecuniary benefits for his acts of dishonesty and criminal breach of trust through his wife Indu Gupta who received an amount of Rs. 1.96 crores from the personal account of Manorama Devi and SMVSSL to her bank accounts No. 10010100015638 at Bank of Baroda, Bhagalpur. Further Indu Gupta, W/o Arun Kumar received Rs. 1.39 crores from account No. 10010200009232 and 10010100013517 of SMVSSL in her bank account No. 10170000923515 at Bandhan Bank. Another amount of Rs. 25 lacs was received by her in her account at ICICI Bank, Danapur, Patna. Rajni Priya who took over as Secretary, Srijan Mahila Vikas Sahyog Samiti Ltd. After the death of Manorama Devi issued cheques worth Rs. 1.64 crores to Indu Gupta. Furthermore, investigation revealed that Arun Kumar deposited cheque No. 549778 dated 06.02.2016 of SMVSSL in account No. 10010100015638 of BOB, Bhagalpur in name of his wife.

It is further alleged that Indu Gupta returned an amount of Rs. 75 lacs to Srijan Mahila Vikas Sahyog Samiti Ltd. On 1st and 2nd December, 2016, from her account No. 50160007624698 at

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Bandhan Bank Bhagalpur.

It is further alleged that Mahesh Mandal received pecuniary benefits to the tune of Rs. 86 lacs in cash from the account of Srijan Mahila Vikas Sahyog Samiti Ltd. And Rs. 25 lacs in his account No. 120000010093457 at PNB, Barari, Bhagalpur through RTGS for his acts of dishonesty and criminal breach of trust.

It is further alleged that Mahesh Mandal placed a forged statement of account No. 10010100016165 on the record of District Welfare Office to suppress his act of dishonesty and criminal breach of trust. The forged statement on record of department reflected credit of cheque No. 333574 of Rs. 6 crore in account No. 10010100016165, whereas actually the cheque was credited in the account No. 10010100013517 of Srijan Mahila Vikas Sahyog Samiti Ltd. Thus, Arun Kumar and Mahesh Mandal connived with Manorama Devi and Sarfraj Uddin (the present petitioner) for criminal breach of trust, forgery for cheating and use of forged record for fraudulent misappropriation of Government funds which were under their entrustment.

It is further alleged that thereafter Arun Kumar and Mahesh Mandal issued cheque No. 601686 dated 18.05.2017 of

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Rs. 5 cres and cheque No. 601035 dated 10.06.2017 of Rs. 2 crore drawn at account No. 10010100005460 of the District Welfare Office at Bank of Baroda to juggle funds to hide their act of criminal breach of trust, forgery for cheating and use of forged record for fraudulent misappropriation. However, both these cheques were not honoured by Bank of Baroda due to insufficiency of funds but Arun Kumar and Mahesh Mandal instead of inquiring about the insufficiency of funds in their account, suppressed the issue by showing these cheques as cancelled in the office register.

It is further alleged that Rajni Priya transferred an amount of Rs. 2.80 crore through cheques to the account No. 10010100005460 of the District Welfare Office at Bank of Baroda and thus helped Arun Kumar and Mahesh Mandal in keeping the fraudulent misappropriation of funds by her and others under the carpet.

It is further alleged that in furtherance of the conspiracy, Arun Kumar and Mahesh Mandal did not report misappropriation of Rs. 115 crores from account No. 10010100005460 of the District Welfare Office at Bank of Baroda. A separate FIR No. 554/2017 has been lodged in this respect at P.S. Kotwali, Bhagalpur.

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The bail is opposed, inter alia, on the ground that the many culprits, who played a major role in siphoning of the money, their earlier bail applications stand rejected and that further investigation in relation to similar/such like cases is going on. There is reasonable apprehension of the accused interfering with the same as also influencing with the witnesses in connection with the instant case. Accused is a powerful person, a man of means and just like other co-accused who were enlarged on bail, namely, Ms. Anjani Prasad and Ms. Indu Gupta, is likely to abscond and misuse the privilege of bail.

The Apex Court, in the case of **State of Bihar & Anr. vs. Amit Kumar @ Bachcha Rai** reported in **(2017) 13 SCC 751,** has clarified that in a case of grant of bail, there cannot be any straitjacket formula. Although bail is the rule and jail is an exception, but then competing forces in relation to attending facts and circumstances are always required to be kept in mind.

The decision rendered in the case of **Nimmagadda Prasad v. Central Bureau of Investigation reported in (2013) 7 SCC 466,** the Apex Court has reiterated the position with regard to economic offences as under:

> "23. Unfortunately, in the last few years, the country has been seeing an alarming rise in white-collar crimes, which has affected the fiber of the

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country's economic structure. Incontrovertibly, economic offences have serious repercussions on the development of the country as a whole. In the *State of Gujarat vs. Mohanlal Jitamalji Porwal; (1987) 2 SCC 364*, this Court, while considering a request of the prosecution for adducing additional evidence, inter alia, observed as under:-

> "5. The entire Community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the Community. A disregard for the interest of the Community can be manifested only at the cost of forfeiting the trust and faith of the Community in the system to administer justice in an even handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest."

24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of

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> granting bail, the Legislature has used the words "*reasonable grounds for believing*" instead of "*the evidence*" which means the Court dealing with the grant of bail can only satisfy it as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.
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> 25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.

The decision rendered in the case of P.Chidambaram V. Directorate of Enforcement in Criminal Appeal No. 1340 of 2019, arising out of SLP (Crl.) No. 7523 of 2019, dated 05.09.2019, the Apex Court has held as under:

> "76. Power under Section 438 Cr.P.C. being an extraordinary remedy, has to be exercised sparingly; more so, in cases of economic offences. Economic offences stand as a different class as they affect the economic fabric of the society. In *Directorate of Enforcement V. Ashok Kumar Jain*; (1998) 2 SCC 105, it was held that in economic offences, the accused is not entitled to anticipatory bail.

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77. The learned Solicitor General submitted that the "Scheduled offence" and "offence of money laundering" are independent of each other and PMLA being a special enactment applicable to the offence of money laundering is not a fit case for grant of anticipatory bail. The learned Solicitor General submitted that money laundering being an economic offence committed with much planning and deliberate design poses a serious threat to the nation's economy and financial integrity and in order to unearth the laundering and trail of money, custodial interrogation of the appellant is necessary.

78. Observing that economic offence is committed with deliberate design with an eye on personal profit regardless to the consequence to the community, in *State of Gujarat v. Mohanlal Jitamalji Porwal and others*; (1987) 2 SCC 364, it was held as under:-

> "5. ….The entire community is aggrieved if the economic offenders who ruin the economy of the State are not brought to book. A murder may be committed in the heat of moment upon passions being aroused. An economic offence is committed with cool calculation and deliberate design with an eye on personal profit regardless of the consequence to the community. A disregard for the interest of the community can be manifested only at the cost of forfeiting the trust and faith of the community in the system to administer justice in an even-handed manner without fear of criticism from the quarters which view white collar crimes with a permissive eye unmindful of the damage done to the national economy and national interest….."

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79. Observing that economic offences constitute a class apart and need to be visited with different approach in the matter of bail, in *Y.S.Jagan Mohan Reddy v. CBI;* (2013) 7 SCC 439, the Supreme Court held as under:-

> "34. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep-rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country.
>
> 35. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations." [underlining added]

80. Referring to Dukhishyam Benupani, Assistant Director, Enforcement Directorate (FERA) v. Arun Kumar Bajoria; (1998) 1 SCC 52, in Enforcement Officer, Ted, Bombay v. Bher Chand Tikaji Bora and Ors.; (1999) 5 SCC 720, while hearing an appeal by the Enforcement Directorate against the order of the Single Judge of the Bombay High Court granting anticipatory bail to the respondent thereon, the Supreme Court set aside the order of the Single Judge granting anticipatory bail.

81. Grant of anticipatory bail at the stage of investigation may frustrate the investigating agency in interrogating the accused and in collecting the useful information and also the materials which

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might have been concealed. Success in such interrogation would elude if the accused knows that he is protected by the order of the court. Grant of anticipatory bail, particularly in economic offences would definitely hamper the effective investigation. Having regard to the materials said to have been collected by the respondent-Enforcement Directorate and considering the stage of the investigation, we are of the view that it is not a fit case to grant anticipatory bail.

82. In a case of money-laundering where it involves many stages of “placement”, “layering i.e. funds moved to other institutions to conceal origin” and “interrogation i.e. funds used to acquire various assets”, it requires systematic and analysed investigation which would be of great advantage. As held in Anil Sharma, success in such interrogation would elude if the accused knows that he is protected by a pre-arrest bail order. Section 438 Cr.P.C. is to be invoked only in exceptional cases where the case alleged is frivolous or groundless. In the case in hand, there are allegations of laundering the proceeds of the crime. The Enforcement Directorate claims to have certain specific inputs from various sources, including overseas banks. Letter rogatory is also said to have been issued and some response have been received by the department. Having regard to the nature of allegations and the stage of the investigation, in our view, the investigating agency has to be given sufficient freedom in the process of investigation. Though we do not endorse the approach of the learned Single Judge in extracting the

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> note produced by the Enforcement Directorate, we do not find any ground warranting interference with the impugned order. Considering the facts and circumstances of the case, in our view, grant of anticipatory bail to the appellant will hamper the investigation and this is not a fit case for exercise of discretion to grant anticipatory bail to the appellant."

Further, the decision rendered in the case of **P.Chidambaram V. Directorate of Enforcement** in Criminal Appeal No. 1831 of 2019, arising out of SLP (Criminal) No. 10493 of 2019, dated 04.12.2019, the Apex Court has held as under:

> "21. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution Bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of "grave offence" and in such circumstance while considering the application for

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> bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial."

It can be clearly seen that the prosecution's case is grave and serious in nature. As the case involves misappropriation of crores of rupees in an organised manner involving public servants and functionaries of bank, it comes under the category of economic offences which altogether constitute not only a separate but distinct crime which is incomparable to any other

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category of crime.

Such acts of organised conspiracies to siphon huge amount of public money needs to be viewed seriously and met with stringent measures so as to act as an deterrent. As such white collar crimes cause serious harm to the economy of a notion the effects of which are far reaching and disastrous.

Learned counsel for the CBI has got serious apprehension of the petitioner influencing the witnesses. Also, it is seen that trial is in progress pursuant to the direction issued by this Court.

Considering the triple test, this Court is not inclined to grant bail, more so the role played by the petitioner and the possibility of the petitioner who has tendency of forging the documents, destroying such evidences and/or fleeing away from the process of law.

As such the application stands dismissed.

(Sanjay Karol, CJ)

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