IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11592 of 2019

Arising Out of PS. Case No.-15 Year-2017 Thana- C.B.I CASE District- Patna

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Ram Krishna Jha @ R.K. Jha, Son of Late Maninath Jha Resident of Brahmin Tola, P.S.- Sabour, District - Bhagalpur.

... ... Petitioner/s

Versus

Central Bureau of Investigation through Its Superintendent of Police, Patna. Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Birendra Kumar Singh
For the Opposite Party/s	:	Mr.Bipin Kumar Sinha, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

8 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. 9 of 2017 arising out of RC 15A/17, registered under Sections 120B, 409, 420, 467, 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.

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*, revealed complicity of, amongst others, present accused bail applicant Ram Krishna Jha, which led to the filing of challan before the appropriate Court, under the provisions of Sections 120B, 409, 420, 467, 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 15.09.2018 whereafter he is suffering incarceration. His earlier two bail applications, filed before this Court as also the trial court, stand rejected.

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

Allegedly, all the accused persons, named in two separate FIR’s, being officers and officials of their respective banking institutions, defrauded the Bhagalpur Central Co-operative Bank Limited, Bhagalpur (hereinafter referred to as the Co-operative Bank’) by fraudulently siphoning of a sum of Rs. 17,94,85,146/- from the account opened by the Co-operative Bank with the Bank of Baroda, Bhagalpur Branch, and a sum of Rs. 30,25,43,630/- from the account of Co-operative Bank opened and managed with the Indian Bank, Bhagalpur Branch, Bhagalpur. The investigation carried out by the CBI has revealed complicity of officials of the Co-operative Bank and Indian Bank, Bhagalpur.

In crux, it is the case of prosecution that some time in the year 2012, Pankaj Kumar Jha, Managing Director and Hari Shankar Upadhyay, Manager (Accounts), Co-operative Bank, entered into a criminal conspiracy with Pradyut Kumar Biswas Ajay Kumar Pandey, Subrat Das, Praveen Kumar, Ram Krishna Jha (present petitioner), all officers and officials of the Indian Bank, Bhagalpur Branch (hereinafter referred to as the 'Indian Bank') and Smt. Manorma Devi, Secretary of Srijan Mahila Vikas Sahyog Samiti Ltd. (hereinafter referred to as the 'SMVSSL) to cheat and misappropriate the funds of the Co-operative Bank.

Pankaj Kumar Jha on the basis of a forged letter got initiated a note, proposing investment of surplus funds of the Co-operative Bank in the Sweep Account to be opened with the Indian Bank, on the purported promise of higher interest @10%, higher than what was normally being offered by the other banks, which was @ 9.25%. On the basis of such approval accorded by Pankaj Kumar Jha, two current accounts in the name of Co-operative Bank were opened, one in the Bank of Baroda, Bhagalpur Branch and other with the Indian Bank, Bhagalpur Branch.

It is alleged that present applicant Ram Krishna Jha played a key role along with the main accused Pankaj Kumar Jha in siphoning of the funds of the Co-operative Bank. He fraudulently filled up a pay-in-slip dated 26.12.2013, in his own handwriting, and got the same signed from Manorama Devi, for the purpose of crediting the proceeds of the Co-operative Bank into the account of SMVSSL. Thereafter, the money was routed to different channels causing loss to the Co-operative Bank. Also, in relation to certain entries, he inserted the account of SMVSSL in the payees column whereas the same ought to have been the Co-operative Bank. In effect, the proceeds of different cheques were credited into the account of SMVSSL in stead of the Co-operative Bank. This was done as a part of larger conspiracy by all the concerned banking officials, with an intent, of causing loss and defrauding the Co-operative Bank.

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 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 15.09.2018 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 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 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 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 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.

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.

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….."

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.
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> 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 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 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 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 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. Two of the co-accused in relation to another connected FIR, who were enlarged on bail have already absconded. The present accused is an influential person and apprehension of CBI, on this count, is not misconceived.

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.

As such the application stands dismissed.

(Sanjay Karol, CJ)

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