IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79702 of 2019

Arising Out of PS. Case No.-42 Year-2019 Thana- PATLIPUTRA District- Patna

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AMIT ANAND, S/o Om Prakash Manjhi, Resident of E.F. Janta Flat, 98 Bahadurpur, Housing Colony, P.S.- Agamkuan, District- Patna, presently residing at Biruachak, Road Second House, P.S.- Mehandiganj, District- Patna.

... ... Petitioner/s

Versus

THE STATE OF BIHAR

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Jha, Adv.

For the Opposite Party/s : Mr. Md. Aslam Ansari, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

C.A.V. ORDER

4 13-12-2019 Heard learned counsel for the petitioner as well as learned Additional Public Prosecutor.

2. It has been alleged at the end of the informant, Abhyuday Narain Singh that he was an unemployed educated person and so, was in search of employment. During course thereof, his friend Aman Kumar @ Aman Kumar Gupta introduced one Amit Anand who claimed himself to be the C.M.D. of Dreamy Drasky Private Limited Company and Trust, address- E/F Janta Flat -98, Bahadurpur Housing Colony/Mobile No.9504246143, Enjal Anand, wife of Amit Anand, M.D./Mobile No.8507286143, Dewal Sinha, Financial Head bearing Mobile No.9204377313, 7903245275 and during course thereof, he disclosed that he happens to be A.M.D. of the

aforesaid company. He persuaded him to join as, by doing job under the aforesaid company he will have the bright career, prospect whereupon, he became inclined to join the same. Thereafter, Amit Anand, Enjal Anand and Dewal Sinha got Rs.3,000/- from him against I.D. Registration and Rs.1,00,000/- as security deposit with an undertaking that at the time of relinquishing the job the aforesaid amount will be returnable. Then, he has been instructed to appoint his subordinate and, during course thereof will have to realize Rs.3,000/- as I.D. Registration and Rs.25,000/- as security deposit. It has also been said at their end that only after having the proper exercise at his end in getting maximum number of persons attached, then and then only, he will be given salary. He anyhow persuaded 14 persons who joined and, as per direction, he realized Rs.39,984/- (by way of online transfer), and Rs.3,52,016/- as direct deposit. Then thereafter, on 01.12.2018, he was given appointment letter whereunder he was identified as C.E.O. having salary of Rs.5,00,000/- (Five lacs) per month. In due course of time, he demanded cash receipt against the aforesaid deposit which, all the accused persons avoided on one pretext or the other. When the persons having been attached by him advanced their demand for payment of salary the same has also been deferred. However, when they continued with repeated demand, Amit Anand began to abuse and said that being a member of Scheduled Caste, he will spoil his career by instituting different kinds of cases under the SC/ST Act. He also refused to pay money. However, on great persuasion he paid him Rs.10,000/- while some of the employees were given Rs.5,000/- by way of online transfer.

3. During course of discharging their professional job, they have perceived something otherwise than normal phenomenon identifying the accused persons being indulged in nefarious game with sole moto to defraud, deceive an innocent in order to procure money through illegal way whereupon, the matter is being reported to the police official.

4. It has been submitted at the end of learned counsel for the petitioner that this case has purposely been filed at the end of the informant in retaliation as, the petitioner has already instituted Kotwali (SC/ST) P.S. Case No.03 of 2019 against him and others. It has further been submitted that the company is engaged in e-commerce business and, informant has rightly been engaged but, being deficient with his professional expertise, he was threatened to be ousted and on account thereof, he along with others indulged in criminal activity for

which, case was instituted and, after coming to know about the same, the instant case has been filed. In an alternative, it has also been submitted that the petitioner is ready to deposit the amount whatsoever been deposited at the end of the informant, before the learned lower court in an installment and till then, the petitioner be allowed to enjoy the privilege of provisional bail and after saturation of the installment the provisional bail be directed to be confirmed.

5. On the other hand, learned Additional Public Prosecutor opposed the prayer and submitted that presence of criminal antecedent is sufficient to draw an inference with regard to the activity being taken up at the end of the petitioner under the banner of Dreamy Drasky Private Limited Company and Trust. However, it has been submitted that when the petitioner is ready to deposit the amount then, in that circumstance, the prayer of petitioner could be properly considered.

6. The sole question now remains whether such kind of condition, irrespective of having been offered at the end of the petitioner, could be ordered.

7. In **Rakesh Baban Borhade vs. State of Maharashtra and another** reported in **(2015) 2 SCC 313**

which was relating to an anticipatory bail, while noticing the informant, by way of interim protection against arrest was granted and, without prejudice to the contentions, appellant was directed to deposit a sum of rupees one crore in the registry of the Supreme Court which the appellant has deposited and, while affirming the interim order it has been held:

> "9. When the Special Leave Petitions came up for hearing, by order dated 9.5.2014 [Rakesh Baban Borhade v. State of Maharashtra, SLPs (Cri) Nos.3527-28 of 2014, order dated 9.5.2014 (SC)] interim protection from arrest was granted to the appellant- accused and without prejudice to the contentions, the appellant was directed to deposit a sum of rupees one crore in the Registry of the Supreme Court and in compliance with the said order, the appellant has deposited rupees one crore. Since the transaction is in the nature of commercial transaction and since the appellant has also shown his bona fide by depositing rupees one crore, pending further investigation, in our view, anticipatory bail could be granted to the appellant.
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> 10. In the result, these appeals are allowed and the appellant is granted anticipatory bail on his furnishing a personal bond of Rs.25,000/- with two sureties of the like amount to the satisfaction of the trial court. The appellant shall co-operate with the investigating agency. Without prejudice to the contention of the parties, the complainant, second respondent (M/s.Merit Magnum Construction) is permitted to withdraw rupees one crore deposited by the appellant in this Court. Withdrawal of the said amount of rupees one crore by the second respondent shall be subject to the result of pending litigation between the parties or any other litigation contemplated by the parties pertaining to the MOU dated 21.12.2005. The appeals stand disposed of accordingly."

8. In **B.N. Srivastava vs. Central Bureau of**

Investigation, EOU-IV, New Delhi, reported in **(2018) 14 SCC 209** relating to Section 439 of the Cr.P.C. whereunder the learned lower court had imposed condition to pay Rs.50 lakhs reduced by the High Court as Rs.10 lakhs which the petitioner deposited, though prayer was subsequently rejected taken into consideration in following manner by the Apex Court and for better appreciation, the same is quoted below:

> "2. The appellant challenged the condition imposed in the order for depositing rupees fifty lakhs as precondition while granting bail before the High Court of Judicature at Allahabad in Crl. M.A.No.16764 of 2016. In the said case an interim order was passed on 31-5-2016 [B.N. Srivastava v. CBI, 2016 SCC OnLine All 2403] staying the imposition of condition of the deposit of rupees fifty lakhs subject to the appellant depositing rupees ten lakhs within one month from the date of the order. Accordingly, the appellant has deposited a sum of rupees ten lakhs. The High Court by its order dated 11-11-2016 [Ravindra Rai v. State, 2016 SCC OnLine All 2402] has dismissed the application filed by the appellant challenging the aforesaid order.
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> 3. We have heard the learned counsel for the parties.
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> 4. It is clear that the appellant has already deposited a sum of rupees ten lakhs in terms of an interim order [B.N. Srivastava v. CBI, 2016 SCC OnLine ALL 2403] passed by the High Court. It is also clear from the materials on record that the co-accused, namely, B.N. Yadav and R.K. Singh have been granted bail without a condition being imposed upon them for depositing the amount. The appellant has been in custody for more than four years. In the facts and circumstances of the case, we are of the view that the Special Court was justified in granting the bail to the appellant. However, the condition imposed by the court below for depositing rupees fifty lakhs is onerous. The appellant has already deposited rupees ten lakhs, which is sufficient for granting bail to him. Therefore, direction issued by the trial court for deposit of rupees

fifty lakhs for grant of bail is accordingly modified."

9. In **State of Bihar vs. Divesh Kumar Chaudhary and another** reported **(2018) 16 SCC 817** whereunder anticipatory bail was granted to the respective petitioner relating to the cases popularly known as 'paddy miller' case on depositing 10% to 20% of the amount involved in different cases, though the Hon'ble Apex Court had modified the order and insisted upon directing the millers to furnish bank guarantee which was the terms of agreement but, at condition no.4.8 it has been held:

> "**4.8.** If any amount is deposited by the accused, the said amount will be adjusted in the amount of the bank guarantee, which is to be furnished by the accused."

10. In **Bikash Manna vs. State of West Bengal** reported in **(2018) 3 SCC 47** whereunder the prayer for anticipatory bail being considered and while issuing notice to the complainant, the Apex Court directed the petitioner to deposit the amount in following manner and for proper appreciation the relevant paragraph is quoted below

> "3. When the matter came up before this Court on 15.09.2017 [Bikash Manna v. State of W.B., SLP (Cri) No.6315 of 2017, order dated 15.9.2017 (SC)], this Court passed the following order:-
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> "The petitioner shall take steps to implead the de-facto complainant. On such an application being filed, notice shall be issued to the State as well as to the de-facto complainant. In connection with FIR No. 261 of

> 2017, registered at Police Station Domjur, Howrah, West Bengal, in case the petitioner is arrested, he shall be released on bail on furnishing a self-bond, subject to the condition that he shall cooperate with the investigation and also subject to the further condition that the petitioner shall deposit a sum of Rs. 10 Lakhs before this Court within six weeks from today. The Registry is directed to keep the abovementioned amount in an interest bearing fixed deposit in a nationalised bank, initially for a period of six months, to be renewed from time to time."

The aforesaid amount was deposited and after appearance of the complainant, he was allowed to withdraw the amount, on the other hand, the appellant was allowed to avail the privilege of anticipatory bail.

11. That being so, the petitioner, Amit Anand is directed to be released on provisional bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Chief Judicial Magistrate-XII, Patna in connection with Patliputra P.S. Case No.42 of 2019 with a condition that before tendering of bail bond, Rs.1,00,000/- (one lack) will be deposited at the end of the petitioner and the remaining amount will be deposited in six equal installments, every month and till then, the petitioner will avail the privilege of provisional bail and after saturation of the whole amount, the provisional bail will be deemed to be affirmed.

In case of failure in depositing even a single installment then, in that circumstance, the provisional bail would cease to survive. Whereupon, the learned lower court will be at liberty to proceed against the petitioner in accordance with law. In order to proper appearance of the petitioner on the record before acceptance of the bail bonds the learned lower court will properly verify with regard to the genuineness as well as soundness of the bailors.

(Aditya Kumar Trivedi, J)

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