IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23563 of 2020

Arising Out of PS. Case No.-15 Year-2012 Thana- C.B.I CASE District- Patna

==

SUMIT KUMAR JAISWAL @ SUMIT KUMAR @ SUMIT KUMAR JAYSWAL @ SUMEET KUMAR, Son of Lakshmi Prasad Resident of - Jagdamba Palace Road, Bharahiya Bazar, P.O. and P.S.- Lakhisarai, District- Lakhisarai, Bihar, presently Residing at Mohallah- Hathsarganj, Road No. 2, Near Jamunilal College, P.S.- Town Hajipur, District- Vaishali, Bihar.

... ... Petitioner/s

Versus

1. THE UNION OF INDIA THROUGH SUPERINTENDENT OF POLICE, CENTRAL BUREAU OF INVESTIGATION, PATNA.
2. CHIEF MANAGER, PUNJAB NATIONAL BANK, SME BRANCH, BORING CANAL ROAD, PATNA.

... ... Opposite Party/s

==

Appearance :
For the Petitioner/s : Mr.Siddhartha Prasad
For the Opposite Party/s : Mr.K.N.Singh (A.D.Sg)

==

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

6 15-12-2020 The learned counsel for the parties were heard at length yesterday and today, the present case has been listed for orders.

The petitioner seeks regular bail in connection with Special Case No. 08 of 2012 arising out of FIR No. P.S. CBI/ACB R.C. 02320 12A 0015, registered for the offence punishable under Sections 420, 409, 467, 468, 471, 120(B) of the Indian Penal Code and Section 13(2) read with Sections 13(1)(c) and (d) of Prevention of Corruption Act, 1988.

The allegation as per the First Information

Report is that the petitioner, who is Director of M/s. Baseline Petroleum Limited, along with other co-accused persons, approached the Bank for credit facilities and the Bank after examining the proposal of the company for credit facilities made by the Directors of the company including the petitioner, sanctioned a term loan of Rs.90 lacs and cash credit facilities of Rs.1.50 crores. It has been further alleged that the petitioner being a Director of the Company along with others, hypothecated the stocks, plants, machinery, and the secured assets and other collateral securities provided by one of the Directors Sri Arvind Kumar Choudhary in the shape of a piece of land pertaining to Khata No. 314, Plot No. 206 (Part), Thana No. 153, Ward No. 4, having an area of 45 decimal of land and another plot having an area of 27 decimal of land total measuring 72 decimal. It has also been alleged that during course of taking possession under the SARFAESI Act, 2002, the bank came to know that the title deeds of 72 decimal of land was a forged documents. It has further been alleged that borrower company in which the petitioner is one of the Directors, in conspiracy with each other, with fraudulent and dishonest intention, induced the complainant bank to grant loan facilities and has committed cheating and misappropriated the loan amount of the bank having a total value of approximately Rs.3 Crore.

The learned counsel for the petitioner has submitted that the petitioner is innocent, he has been falsely implicated in the present case, he is having a clean antecedent and he is languishing in custody since 02.02.2020. The learned counsel for the petitioner has further submitted that as far as the first charge-sheet is concerned, which is dated 30.09.2013, the petitioner was not sent up for trial inasmuch as no material was available to show the complicity of the petitioner in the alleged occurrence and the first charge-sheet was filed only against the co-accused persons, namely, Dinesh Prasad Sinha, Atul Kumar, Arvind Kumar Choudhary, Ravi Bhushan Singh and Pramod Kumar Chaudhary. It is also submitted that while submitting the supplementary charge-sheet dated 17.02.2014, the petitioner was also roped in on a bald allegation of him having mis-utilized the funds of the Bank, but more or less, the same materials, as were brought on record in the first charge-sheet, were also mentioned ad verbatim in the supplementary charge-sheet, nonetheless, the same was also filed against the petitioner herein without there being any material against him. The learned counsel for the petitioner has also pointed out that the co-accused person, namely, Ravi Bhushan Singh, Advocate, has been granted anticipatory bail by a coordinate Bench of this Court vide order dated 25.03.2014 passed in Criminal Miscellaneous No. 4545 of 2014. Another co-accused person, namely, Dinesh Prasad Sinha, the Chief Manager of Punjab National Bank, has also been granted bail by a coordinate Bench of this Court vide order dated 29.01.2015 passed in Criminal Miscellaneous No. 34399 of 2014. Yet another co-accused, namely, Pramod Kumar Choudhary and Atul Kumar, have been granted regular bail by coordinate Benches of this Court. Lastly, it is submitted that the main accused is Arvind Kumar Choudhary, who is still absconding. The learned counsel for the petitioner has also submitted that in case, this Hon'ble Court deems it fit and proper to reject the instant petition, then it may consider granting similar treatment as has been ordered by a coordinate Bench of this Court in the case of similarly situated co-accused person, namely, Ajay Kumar Jaiswal vide order dated 02.12.2020 passed in Criminal Miscellaneous No. 23646 of 2020 whereby and whereunder liberty has been granted to renew the prayer for bail after nine months if the trial does not show any progress.

Per contra, the learned counsel for the CBI as well as the learned counsel for the Bank have vehemently opposed the prayer for bail. It is submitted that the petitioner had earlier moved for grant of anticipatory bail before this Court, however, the same was dismissed by a coordinate Bench of this Court vide order dated 12.11.2013 passed in Criminal Miscellaneous No. 50069 of 2012. It is stated that the petitioner had then again filed yet another anticipatory bail before this Court vide Criminal Miscellaneous No. 40333 of 2015, which was also rejected by a coordinate Bench of this Court vide order dated 8.10.2015 and the said petition was withdrawn. It is also pointed out that the petitioner had also approached the Hon'ble Apex Court by filing a special leave petition bearing SLP (Criminal) No. 9868 of 2013, however, the same had also stood dismissed vide order dated 16.12.2013 and the petitioner was granted four weeks' time to surrender in connection with the FIR in question, however, despite lapse of several years, the petitioner did not honor the orders of the Hon'ble Apex Court and continued to remain absconding. The court below, thereafter, exhausted the procedure of Section 82 and 83 Cr. P.C. against the petitioner and, ultimately, the petitioner was declared absconder and permanent warrant of arrest was issued against him. Learned counsel thus submits that despite the fact that permanent warrant of arrest was issued against the petitioner in 2017, the petitioner did not surrender and, ultimately, he was arrested by the CBI in the year 2020. The co-accused i.e. Managing Director of the Company namely, Arvind Kumar Choudhary, is still absconding. Learned counsel thus submits that if the petitioner is enlarged on bail, there is possibility that he will abscond and will not submit to the jurisdiction of the Court as is evident from his past conduct. Learned counsel, referring to the supplementary charge sheet, submits that the petitioner along with other co-accused persons, who are Director of Baseline Petroleum Limited and the petitioner is also one of the Directors of Vaishali Paints Limited and the then Branch Manager of SME, Punjab National Bank, East Boring Canal Road, Patna, had obtained their specimen signature for use of the same in the bank. The petitioner along with other Directors were authorized by the company (Vaishali Paints Ltd.) to sign over the cheques, bill of exchange and any other documents concerning the company.

Learned counsel further submits that investigation has also revealed that the documents executed by the borrower company (M/s. Baseline Petroleum Ltd.) in the bank for the loan i.e. Agreement executed by borrower, Agreement of guarantee, Supplementary Agreement, letter of undertaking, hypothecation of goods and schedule of security, were also signed by the petitioner and other Directors of M/s. Baseline Petroleum Ltd. and, accordingly, the petitioner along with other accused persons, dishonestly and fraudulently, in conspiracy with each other, committed the present offence and caused a wrongful loss of Rs.240 lacs to the Punjab National Bank and corresponding wrongful gain to themselves. Learned counsel further submits that investigation has also revealed that Term Loan component was fully disbursed and the then Branch Manager of SME Branch (PNB), Patna, accused Shri D.P. Sinha and the then Officer (Loan), accused Shri Atul Kumar had released the entire Working Capital (Cash Credit) component. Most of the working capital component was disbursed through Bank Drafts in the name of GAIL (India) Limited and were simply handed over to the borrowers. The Directors of M/s. Baseline Petroleum Ltd. fraudulently manipulated the Bank Drafts which were in the name of GAIL (India) Limited and diverted the supply of chemicals to M/s. Vaishali Paints Ltd., in which, the petitioner is one of the Directors. Accordingly, the Directors of M/s. Baseline Petroleum Ltd. cheated the Bank by diverting the chemical of Baseline Petroleum Ltd. to Vaishali Paints Ltd.. Learned counsel further submits that the ground of parity does not exist inasmuch as the petitioner is one of the Directors' of the borrower company and overt acts of the petitioner and other Directors are manifest from the materials available on record. The offence, in which the petitioner is involved, is very serious and the petitioner in connivance and conspiracy with other Directors, defrauded and cheated the bank and misappropriated a huge amount of Rs.240 lacs. The petitioner joined hands with other

Directors, and, he intentionally, knowingly and deliberately defrauded the bank in a systematic and calculative manner. Learned counsel submits that in the last few years, the country has seen an alarming rise in white-collar crimes of bank fraud for personal gain at the cost of public money which may lead to economic disaster, if not dealt with iron hands.

Having considered the submissions made by the learned counsel for the parties and taking into account the materials available on record as also in the counter affidavit filed by the respondent-Bank, this Court finds that the petitioner has not even bothered to comply with the order of the Hon'ble Supreme Court dated 16.12.2013 whereby and whereunder the petitioner was granted four weeks' time to surrender, long back i.e. in the year 2013 and had been absconding since then, till the time he was arrested only in the year 2020, which definitely goes to show that the petitioner has scant regard for the process of law and has left no stone unturned to overreach the process of law, thus, such a person is required to be dealt with iron hands. Consequently, the present petition stands dismissed, nonetheless, having regard to the order dated 02.12.2020 passed by a coordinate Bench of this Court in Criminal Miscellaneous No. 23646 of 2020 and considering the facts and circumstances of the present case, liberty is granted to the petitioner to renew his prayer for bail after completion of two years in custody, in case, there is no progress in the ongoing trial.

(Mohit Kumar Shah, J)

Ajay/-

U		T	