IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26335 of 2020
Arising Out of PS. Case No.-15 Year-2017 Thana- C.B.I CASE District- Patna
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AJAY KUMAR PANDEY S/o Rameshwar Pandey Resident of Village-Masakchak Sarat Chand Path, Police Station-Aadampur, District-Bhagalpur.

... ... Petitioner/s

Versus

THE CENTRAL BUREAU OF INVESTIGATION (C. B. I.), NEW DELHI New Delhi

... ... Opposite Party/s
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Appearance :
For the Petitioner/s : Mr.Sanjeev Ranjan, Advocate
For the Opposite Party/s : Mr. Bipin Kumar Sinha, Advocate
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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

3 19-10-2020 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Heard the learned counsel appearing for the petitioner and Shri Bipin Kumar Sinha, learned counsel for the CBI.

The petitioner seeks regular bail in connection with Special Case No. 9 of 2017 (R/C-15/A/17) arising out of Bhagalpur Kotwali P.S. Case No. 508 of 2017 for the offence punishable under Sections 409, 420, 467, 468, 471, 120(B) and 34 of the Indian Penal Code.

It is alleged that during the period 2012-14, the officials of Indian Bank, Bhagalpur Branch and others fraudulently embezzled an amount of Rs. 30,25,43,630/- from the Current

Account No. 6084978909 of the Bhagalpur Central Cooperative Bank Limited, Bhagalpur Branch, maintained with the Indian Bank, Bhagalpur Branch, Bhagalpur

It is further alleged that during the period 2012-14, the proceeds of five cheques worth Rs. 20,00,00,000/-, issued by the Bhagalpur Central Cooperative Bank Limited, Bhagalpur were not credited in its current account and Sweep Account No. 6084978909, maintained with the Indian Bank, Bhagalpur Branch, rather the officials of the Indian Bank, Bhagalpur Branch and others fraudulently embezzled the said amount. It is alleged that during the period 2012-17, the officials of Bank of Baroda, Bhagalpur Branch and others fraudulently embezzled an amount of Rs. 17,94,85,446.83 from Current Account No. 10010100013202 of the Bhagalpur Central Cooperative Bank Limited, Bhagalpur Branch, maintained with the Bank of Baroda, Bhagalpur Branch, Bhagalpur.

It is also alleged that during the period 2012-17, the proceeds of nine cheques worth Rs. 30,95,28,000/- issued by the Bhagalpur Central Cooperative Bank Limited, Bhagalpur were not credited in its current account and Sweep Account No. 10010100013202, maintained with the Bank of Baroda, Bhagalpur Branch, rather the officials of Bank of Baroda, Bhagalpur Branch and others fraudulently embezzled the said amount.

It is further alleged that the Bhagalpur Central Cooperative Bank Limited, Bhagalpur Branch vide letter no. 1133, dated 01.11.2013, had forwarded HDFC Bank Cheque No. 000054, dated 31.10.2013 for a sum of Rs. 2,00,00,000/- for being deposited in their current account and Sweep Account, maintained with the Bank of Baroda, Bhagalpur Branch, however, the officials of the Bank of Baroda, Bhagalpur Branch and others fraudulently did not deposit the proceeds of the said cheque in the current account of the Bhagalpur Central Cooperative Bank Limited, Bhagalpur Branch, maintained in the Bank of Baroda.

The present case is related to investigation with regard to misappropriation/embezzlement of the proceeds of five cheques, which were forwarded by the Bhagalpur Central Cooperative Bank Limited, Bhagalpur to the Indian Bank, Bhagalpur Branch, Bhagalpur for preparation of STDRs/transferring the proceeds into Account No. 6084978909 of the Bhagalpur Central Cooperative Bank Limited, Bhagalpur maintained with Indian Bank, Bhagalpur Branch, Bhagalpur.

As far as the petitioner is concerned, the investigation has revealed that the co-accused person Shri Pradyut Kumar Biswas had conspired with the petitioner herein and had fraudulently, by abusing their official position, had got a pay-in-slip dated 08.06.2012 prepared from Shri Mithilesh Kumar, *Ad hoc* staff of Indian Bank, Bhagalpur Branch for crediting the proceeds of the said cheque into the account of *Srijan Mahila Vikash Sahyog Samiti Limited* and the said Pradyut Kumar Biswas is alleged to have fraudulently entered the said cheque so as to credit the proceeds in the account of the said Samiti instead of processing the said cheque for issuance of STDRs in favour of the Bhagalpur Central Cooperative Bank Limited. It has also been revealed during the course of investigation that the co-accused person namely Shri Pankaj Kumar Jha had obtained a letter dated 12.09.2012, purportedly issued by the Chief Manager, Indian Bank, Bhagalpur to the Bhagalpur Central Cooperative Bank Limited offering an interest of 10 per cent on fixed deposit for a period of one year and had brought it on record of the Bhagalpur Central Cooperative Bank Limited, Bhagalpur (hereinafter referred to as the 'B.C.C.B.L.'). It has further been revealed during the course of investigation that the said letter dated 12.09.2012 was forged and fake and was not issued by the Indian Bank, Bhagalpur Branch. It has also come to the fore that after the co-accused person Pankaj Kumar Jha had obtained the aforesaid forged letter dated 12.09.2012, he had got it processed and had also approved the proposal for investing the fund of B.C.C.B.L. at Indian Bank, Bhagalpur Branch on 28.12.2012 itself and then he had got a current account opened in the name of B.C.C.B.L. at Bank of Baroda, Bhagalpur Branch on 26.11.2012.

The learned counsel for the petitioner has submitted that the petitioner is languishing in custody since 12.07.2017 and as far as the cases mentioned in paragraph no. 3 of the present petition are concerned, they arise out of the same transaction/the same subject matter in question. It is submitted that as far as the present case is concerned, the same is confined to misappropriation of the proceeds of five cheques which were forwarded by B.C.C.B.L., Bhagalpur to the Indian Bank Bhagalpur for preparation of STDRs. It is also submitted that the CBI has investigated the case and has submitted its charge sheet, however, the CBI has failed to establish any role of the petitioner in the alleged misappropriation of money and at best the petitioner can be said to have been instrumental in preparation of the pay-in-slip, however, neither the CBI has been able to bring on record material showing that the said pay-in-slip was filled by the petitioner nor any material has come on record to show that the proceeds of the misappropriated amount had also reached the hands of the petitioner. It is further submitted that if at all anyone is responsible for the alleged misappropriation of money, it is the co-accused person, namely, Pankaj Kumar Jha, Pradyut Kumar Biswas and others but not the petitioner herein, nonetheless, the petitioner is languishing in custody since 12.07.2017 i.e. since more than a period of three years.

The learned counsel for the petitioner has also relied on an order dated 17.07.2020 passed in *SLP (Criminal) No. 1530 of 2020 (Pankaj Kumar Jha vs. The State of Bihar & Ors.)*, paragraph nos. 5 to 8 whereof are reproduced herein below:-

"5. It is not in dispute that the accused-appellant is in custody since 19th August, 2017.

6. It is fairly accepted by the counsel appearing for the respondent-State that investigation is complete. In that sense, further custody of the accused-appellant may not be necessary.

7. Accordingly, taking overall view of the matter, we deem it appropriate to direct release of the accused-appellant on bail on such terms and conditions as may be determined by Trial Court in connection with Special Case No. 37/2017 arising out of F.I.R. No. RC 2172017A0015 dated 25.08.2019, P.S. CBI/AC-II/New Delhi, District New Delhi. We order accordingly.

8. The order dated 16.10.2019 passed by the High Court is set aside and the appeal is disposed of accordingly."

Per contra, the learned counsel for the CBI Shri Bipin Kumar Sinha has though submitted that as far as the present case is concerned, the investigation is complete and the custody of the accused-petitioner may not be necessary, however, it is submitted that he has come to know that investigation of another case bearing RC Case No. 17A/2017 is still going on. It is further submitted that the charge sheet filed by the CBI would show that the petitioner has got complicity in the alleged occurrence and is one of the link in the organized misappropriation of money carried out by the accused persons, hence it is prayed that the present petition be dismissed.

I have heard the learned counsel for the parties and perused the materials on record. This Court finds that the learned counsel for the CBI has not denied that the investigation of the present case is complete. This Court further finds that no material has been brought on record to show that either the petitioner is going to tamper with the evidence or shall not cooperate in the ensuing trial, if any.

Considering the fact that the Hon'ble Apex Court has been pleased to grant bail to the co-accused person, namely, Pankaj Kumar Jha as also taking into the account the period of incarceration of the petitioner herein and the factum of the investigation being complete, I deem it fit and proper to direct for release of the petitioner, above named, on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge-II, Central Bureau of Investigation, Patna in connection with Special Case No. 9/17 (R/C-15/A/17) arising out of Bhagalpur Kotwali P.S. Case No. 508 of 2017, subject to the following conditions:-

(a) The petitioner shall fully cooperate with the investigation/trial of the case, failing which the learned court below shall be at liberty to cancel the bail bond of the petitioner,

(b) Both the bailors shall be resident of the territorial jurisdiction of the learned court below, and

(c) The petitioner shall not leave the country without permission of the learned trial court.

(Mohit Kumar Shah, J)

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