IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23646 of 2020

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

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

... ... Petitioner/s

Versus

THE UNION OF INDIA THROUGH SUPERINTENDENT OF POLICE, CENTRAL BUREAU OF INVESTIGATION, PATNA. Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Siddhartha Prasad, Advocate
For the CBI	:	Mr. Bipin Kumar Sinha, Advocate
For the State	:	Mr. Suresh Prasad Singh No. 1,

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

5 02-12-2020 Heard Mr. Siddhartha Prasad, learned counsel for the petitioner, Mr. Bipin Kumar Sinha, learned counsel for the CBI and Mr. Suresh Prasad Singh No. 1, learned Additional Public Prosecutor appearing for the State through video conferencing.

Petitioner seeks regular bail in connection with Special Case No. 08(A) of 2012 arising out of FIR No. P.S. CBI/ACB R.C. 02320 12A 0015 registered for the offences punishable under Sections 420, 409, 467, 468, 471, 120(B) of the Indian Penal Code 1860, Section 13(2) read with 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 further been 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 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 fraudulnt and dishonest intention, induced the complainant bank for grant of loan facilities and has committed cheating and misappropriated the loan amount of the bank having a total value of approximately Rs.3 Crore.

Learned counsel for the petitioner submits that petitioner has not committed any offence in the manner alleged inasmuch as the petitioner was appointed as Director of M/s. Baseline Petroleum Limited i.e. borrower company in 2007 by the co-accused Arvind Kumar Choudhary who was the Managing Director of the company and the petitioner was working as an employee in the said company. Learned counsel further submits that two charge sheets have been submitted and since during course of investigation, no material was found against the petitioner, accordingly, the petitioner was not chargesheeted in the first charge sheet and he has been implicated in the second charge sheet without any material. Learned counsel also submits that the petitioner is an illiterate person and being an employee of the borrower company, left with no option, but to sign loan document provided by the co-accused Arvind Kumar Choudhary. Learned counsel next submits that other co-accused persons have been granted regular bail by co-ordinate Benches of this Court in Cr. Misc. Nos. 34399 of 2014, 51102 of 2014, 2467 of 2017 and one co-accused namely, Ravi Bhushan Singh has been granted anticipatory bail in Cr. Misc. 4545 of 2014 respectively, details of which, has been mentioned in paragraph-30 of the bail application.

On the other hand, learned counsel for the CBI as well as counsel for the Bank vehemently opposed the prayer for bail and submits that the petitioner had moved earlier for grant of anticipatory bail along with other co-accused persons including the Managing Director Arvind Kumar Chaudhary also in Cr. Misc. 50069 of 2012 which was rejected by a co-ordinate Bench of this Court vide order dated 12.11.2013. The petitioner again filed anticipatory bail before this Court vide Cr. Misc. No. 40333 of 2015 which was rejected by this Court vide order dated 8.10.2015 and the petition was withdrawn. Learned counsel further submits that despite rejection of the anticipatory bail application of the petitioner twice, he did not surrender and remained 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 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 to the company.

Learned counsel further submits that investigation 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 also revealed that Term Loan component was fully disbursed, 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 on diversion of 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 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 hand.

This Court vide order dated 19.10.2020 had called for a report from learned Special Judge -1, CBI, Patna and report vide letter No.57 dated 13.11.2020 has been furnished by the Special Judge, CBI-I. From perusal of the report, it appears that altogether 28 charge sheet witnesses are there in this case. The charges have been framed against the petitioner on 31.10.2020. The trial court has also informed that the trial is likely to be concluded within 12 months if the witnesses will co-operate in the case.

Having heard learned counsel for the parties and taking into consideration the materials on record in totality, the fact that the conduct of the petitioner in past was not good inasmuch as he remained absconding for a long period of time i.e. since 2013-14, I am not inclined to grant regular bail to the petitioner at this stage.

Accordingly, the prayer for bail of the petitioner stands rejected.

However, the petitioner may renew his prayer for bail after nine months if the trial does not show any progress.

(Anil Kumar Sinha, J)

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