IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.25504 of 2020

Arising Out of PS. Case No.-147 Year-2019 Thana- SHEOHAR District- Sheohar

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ALOK KUMAR Son of Shri Ashok Jaiswal Resident of Village - Shyampur, P.S.- Shyampur Bhataha, District - Shivhar

... ... Petitioner

Versus

The State of Bihar

... ... Opposite Party

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Appearance :
For the Petitioner/s : Mr.Pravin Kumar, Advocate
For the Opposite Party/s : Mr. Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3 09-11-2020 Heard learned counsel for the petitioner and Mr. Akhileshwar Dayal, learned A.P.P. for the State.

Petitioner, in the present case, is seeking regular bail in connection with Shivhar P.S. Case No. 147 of 2019 registered for the offences punishable under Section 420, 409 of the Indian Penal Code.

Learned counsel for the petitioner submits that this petitioner was an employee of one C.M.S. Info System Limited. The said company was engaged in loading of cash in the ATMs of the banks. It is alleged that as custodian this petitioner and co-accused Avinash Kumar were working with the company at Shivhar location and they had a responsibility to fill up cash in the eight ATMs. It is alleged that these two persons were having the password and keys of those ATMs. The petitioner was working since 09.01.2015 whereas co-accused who was working w.e.f. 16.05.2016.

It is alleged that in the First Information Report that during ATM audit, in six ATMs a sum of Rs. 47,32,400/- were found less filled up, whereupon allegations have been made that this petitioner and co-accused Avinash Kumar had conspired and misappropriated the aforesaid amount.

It is alleged that in course of inquiry the petitioner and co-accused had agreed in presence of their brothers that they would refund the amount but till lodgment of the F.I.R. they had deposited Rs. 18,30,000/-. It is alleged that till now Rs. 29,02,000/- remains misappropriated. Learned counsel submits that the petitioner is not a technical expert and he could not have tampered with the ATMs. His only work was to deposit the money in the ATMs along with the co-accused with their respective password and keys. As a matter of system operation in case of any shortage of amount in the deposit as generated by the bank the ATM will automatically be closed and it will not be operational and the centralized system from Mumbai will immediately inform the concerned bank of lesser deposit, however, in the present case, there is no such complaint and in course of investigation the police though tried to contact the informant as well as the auditor in order to ascertain the details but they were not available.

Learned counsel submits that on a typed copy of the undertaking signature was obtained by the petitioner and his brother and the same has been converted now showing that the amount has been misappropriated by the petitioner and the co-accused.

Learned counsel further submits that somehow by selling some of his properties petitioner has deposited some amount and at this stage to show his bonafide, without prejudice to his contentions petitioner is ready to deposit Rs. 10 Lakhs in the court below subject to result of the case.

Learned A.P.P. for the State has though opposed the prayer for regular bail of the petitioner, considering the nature of the transactions and the dispute as also the contentions of the petitioner showing towards the joint responsibility and then the submission that he is not a technical person as also that he is ready to deposit Rs. 10 Lakhs for the present in the court below subject to result of the case, the petitioner being in custody since 08.06.2020, he is directed to be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand only) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Shivhar, in connection with Shivhar P.S. Case No. 147 of 2019, subject to the condition as laid down under Section 437 (3) Cr.P.C. as under :

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and

(c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

Further condition that in terms of his own undertaking the petitioner will deposit Rs. 10 Lakhs in the learned court below whereupon the court below shall accept the bail bond and will issue the order of release. Such deposit shall remain deposited in the court below or may be released in favour of the informant subject to appropriate security to be obtained from the informant by the learned court below to his satisfaction, to abide by the result of the case and refund the amount, if so required. This will be without prejudice to the contentions of the petitioner.

And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner.

And further condition that he will abide by and observe the guidelines and directives of the Government of India and the State Government with regard to COVID-19 Pandemic.

This application stands disposed off accordingly

(Rajeev Ranjan Prasad, J)

Rajeev/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.