IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74204 of 2019

Arising Out of PS. Case No.-319 Year-2018 Thana- PATLIPUTRA District- Patna

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Nnaemeka Augustine @ Odikpo Son of Mr. Nnaemeka Odikpo Resident of School Road lyowaodkpe Ogbaru Local Govt. Nigeria. at present Mohan Garden near Panti Tanki Jain Road, P.S.- Uttam Nagar, Distt - New Delhi.

... ... Petitioner/s

Versus

1. The State of Bihar Bihar
2. Economic Offence Unit (Bihar) Patna

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Krishna Prasad Singh, Sr. Advocate Mr. Shambhu Kumar, Adv.
For the State	:	Mr. Akshay Lal Pandit, APP
For O.P. No.2	:	Mr. Bishwanath Singh, Sr Advocate Mrs. Soni Srivastava, Adv.
For the Informant	:	Mr. Kumar Ravish, Adv.

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

5 26-06-2020 The matter has been taken up through virtual Court proceeding.

Heard Mr. Krishna Prasad Singh, learned Senior Counsel for the petitioner, Mr. Bishwanath Singh, learned Senior Advocate assisted by Mrs. Soni Srivastava, learned counsel for the Economic Offences Unit (Bihar) Patna, Mr. Kumar Ravish, learned counsel for the informant and Mr. Akshay Lal Pandit, learned counsel for the State.

The petitioner is languishing in jail since 2.10.2018 in a case registered for the offences punishable under Sections 420 and 379 of the Indian Penal Code, 1860 and Section 66(c) of the Information

Technology Act, 2000, hence, through the present application, prayer has been made for grant of bail to the petitioner.

The prosecution case, as per the written report of Debla Devi submitted to the SHO, Patliputra Police Station, is to the effect that the informant received messages through SMS and e-mail that 85000 pound is to be transferred in her bank account. However, in order to receive said amount, the informant was asked to remit Rs. 27,000/-. Subsequently, on 04.05.2018, the said amount was remitted by the informant, thereafter, on 5.5.2018, the informant remitted Rs. 35,000/- and ultimately on pressure being made, she transferred Rs.84,56,645/- but thereafter neither the money was transferred to the informant nor was the money transferred by the informant, was returned to her, leading to registration of the present FIR against unknown.

During investigation, it transpired that the amount was transferred in the account of co-accused Lalditsak and others accounts and the petitioner Augustine @ Odikpo withdrew Rs. 7,000/- by using ATM card of co-accused Lalditsak. Consequently, the petitioner was apprehended and he confessed to have withdrawn money from the account of co-accused Laldit Sak through ATM Card which was recovered from his possession. Consequently, it was found that the petitioner is a Nigerian citizen and he admitted that he came to India on a medical visa but his visa has already been expired. The Nigerian embassy was informed about the arrest of the petitioner.

It is submitted by learned Senior Counsel for the petitioner that admittedly no amount has been transferred to the account of the petitioner and even if the petitioner has used the ATM card of co-accused Lalditsak, in whose account, the major amount of the informant has been found to have been transferred, the offence alleged is not made out against the petitioner. However, no specific investigation has been made with regard to quantum of money withdrawn by the petitioner by using the ATM card of co-accused Lalditsak, as CCTV footage could not be available to suggest the exact withdrawal of money from the ATM card of co-accused by the petitioner. It is further submitted that the investigation has already been concluded. Statement has been made in paragraph 3 of the petition that the petitioner is not having any criminal antecedent. Learned counsel for the petitioner has not controverted this fact that the petitioner is not having a valid visa at present.

Mr. Bishwanath Prasad Singh, learned Senior counsel assisted by Mrs. Soni Srivastava, appearing for Economic Offences Unit, Bihar submit that admittedly the amount was transferred in the account of co-accused Lalditsak and others and not in the account of the petitioner because the account of the petitioner could not be located till conclusion of investigation against the petitioner, however, paragraph 238 of the case diary suggests that 75 withdrawals have been made from the account of co-accused Lalditsak, but out of those withdrawals, how many times the petitioner withdrew the amount, that has not been verified during investigation. Above all, the petitioner has admitted in his statement under Section 161 Cr.P.C. that he came to India on medical visa and same has already been expired, but no intimation was given to Ministry of Home, Government of India in this regard nor any investigation has been made to that effect. Moreover, chargesheet has been submitted against the petitioner under Sections 420 and 379 of the IPC and Section 66(c) of the I.T. Act.

Considering the rival submissions of the parties, it appears unreasonable that the informant has transferred such a huge amount without any basis and even if she transferred the amount in certain account, the FIR was lodged against unknown, the prosecution has failed to explain such an unreasonable behaviour of the informant. Moreover, there is nothing on record to suggest that the amount has been transferred in the account of the petitioner, moreover, with regard to the petitioner the investigation has been concluded, let the petitioner above named be released on bail, for the present, provisionally for a period of three months on furnishing two local sureties and an undertaking to the effect that he will not leave the territorial jurisdiction of Patna district without the permission of the learned Court below to the satisfaction of the learned Sub Judge XII-cum-ACJM, Patna in connection with Patliputra P.S. Case No. 319 of 2018, subject to submission of passport with valid visa before the learned Court below and both the bailors should be Indian citizens.

The learned Court below will get the passport of the petitioner deposited in safe custody of the Court till the conclusion of trial.

However, in view of the present pandemic COVID-19, it will be open for the learned Court below to accept the bail bond on furnishing an undertaking by the sureties, on photo copy of his Aadhar Card to the effect that they are ready to become the bailor of the petitioner which may be transmitted by such sureties to the learned Court concerned through e-Mode.

The provisional bail of the petitioner will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned Sub Judge XII-cum-ACJM, Patna including one surety given at the time of provisional bail.

The learned Court below will be at liberty to further extend the period of provisional bail if the Court proceeding in physical mode will not resume in next three months.

Considering the fact that no investigation has been made with regard to the circumstances under which, the petitioner was staying in India without having a valid visa nor the case diary reflects that any investigation has been made with regard to violation of law of immigration nor the Ministry of Home, Government of India was intimated about the same, nor any steps have been taken for impounding the passport of the petitioner, let a copy of the order be transmitted to the Additional Chief Secretary-cum-Principal Secretary, Government of Bihar and to the office of learned Additional Solicitor General of Union of India for onward communication to the Ministry of Home, Government of India.

(Dinesh Kumar Singh, J)

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