IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 12084 of 2021

Arising Out of PS. Case No.-132 Year-2020 Thana- Sherghati District-Gaya

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Sunil Kumar (Male), aged about 29 years, son of Umesh Yadav, Resident of Village-Sri Ram Bigha, P.S.- Gurua, District-Gaya

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. P K Shahi, Senior Advocate with Mr. Arun Kumar, Advocate
For the State	:	Mr. Manoj Kumar No. 1, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 30-07-2021

The matter has been heard *via* video conferencing.

2. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the petitioner on 22.07.2021, which was allowed.

3. Heard Mr. P K Shahi, learned senior counsel along with Mr. Arun Kumar, learned counsel for the petitioner and Mr. Manoj Kumar No. 1, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Sherghati PS Case No. 132 of 2020 dated 18.03.2020, instituted under Sections 409/420/34 of the Indian Penal Code.

5. The allegation against the petitioner and four others

who were at the relevant time employed under The Magadh Central Co-operative Bank Limited (hereinafter referred to as the 'Bank'), is that in connivance with each other a sum of Rs. 79,78,166.49 was defalcated.

6. Learned counsel for the petitioner submitted that during the relevant period, he was only a contractual Assistant and at the lowest rung of hierarchy. It was submitted that without going into the finer details on merits, it has come in the audit, which is the basis of lodging of the present FIR, that the petitioner was responsible for an amount of Rs. 25,84,049/-. It was submitted that out of the same, Rs. 24,00,000/- was earlier deposited on 17.06.2020 and the remaining amount of Rs. 1,84,649/- has also been credited thereafter. In this connection, learned counsel drew the attention of the Court to the order of the learned Sessions Judge, Gaya dated 12.10.2020 in ABP No. 1074 of 2020 which has been filed on behalf of the petitioner along with analogous cases. It was submitted that the main amount of Rs. 64,31,880/- is due to alleged defalcation by co-accused Javed Hussain, the then Assistant who has sent a letter to the Managing Director of the Bank that he along with the petitioner was responsible for such misappropriation and that since he is not in India, on return he would deposit the same.

The amount also has been disclosed i.e., Rs. 64,31,880/- which was transferred in his personal account. Learned counsel submitted that the petitioner having satisfied whatever amount is said to have been defalcated, without going into the correctness of the accusation, may be granted indulgence as he will be facing the trial and no useful purpose would be served by putting him behind bars. It was submitted that the petitioner has no other criminal antecedent.

7. Learned APP submitted that the petitioner was also involved in the defalcation of huge amount of almost Rs. 80 lakhs. However, it was not controverted that as per the finding in the order dated 12.10.2020 of the learned Sessions Judge, Gaya by which the prayer for anticipatory bail of the petitioner was rejected, it has been noted that the petitioner had deposited a sum of Rs. 1,84,649/- and that Rs. 64,31,880/- was transferred in the personal account of co-accused Javed Hussain, who has written a letter to the Managing Director of the Bank that because he was out of country, on return he be given time to deposit the entire defalcated amount.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court, in view of the petitioner having deposited the amount

alleged to have been defalcated by him, is inclined to interfere. Accordingly, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned Additional Chief Judicial Magistrate, Sherghaty, Gaya in Sherghaty PS Case No. 132 of 2020, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further (i) that one of the bailors shall be a close relative of the petitioner, (ii) that the petitioner and the bailors shall execute bond with regard to good behaviour of the petitioner, and (iii) that the petitioner shall also give an undertaking to the Court that he shall not indulge in any illegal/criminal activity, act in violation of any law/statutory provisions, tamper with the evidence or influence the witnesses. Any violation of the terms and conditions of the bonds or the undertaking shall lead to cancellation of his bail bonds. The petitioner shall cooperate in the case and be present before the Court on each and every date. Failure to cooperate or being absent on two consecutive dates, without sufficient cause, shall also lead to cancellation of his bail bonds.

9. It shall also be open for the prosecution to bring

any violation of the foregoing conditions of bail by the petitioner, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioner.

10. The petition stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

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