**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**CRIMINAL MISCELLANEOUS No.17107 of 2020**

Arising Out of PS. Case No.-4 Year-2017 Thana- C.B.I CASE District- Patna

======================================================

KESHAV KUMAR S/o Late Sidheshwar Prasad Resident of Flat No. 204, Kapildev Enclave, near Machili Talab, Kusumpuram, Gola Road, P.O.and P.S.- Rupaspur, District- Patna

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Central Bureau of Investigation through Govt. of Bihar, Patna Bihar

... ... Opposite Party/s

======================================================

**Appearance :**

| | | |
|---|---|---|
| For the Petitioner/s | : | Mr. Madhumay Madhup, Advocate<br>Mr.Ram Prawesh Kumar, Advocate |
| For the State | : | Mr.Chandra Sen Prasad Singh, A.P.P. |
| For the C.B.I. | : | Mr. Bipin Kumar Sinha, Advocate |

======================================================

**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

ORAL ORDER

9 29-01-2021 The learned counsel for the parties were heard at length on 27.01.2021 and the present case has been listed today 'For orders'.

The petitioner apprehends his arrest in connection with Special Case No. 08 of 2017 arising out of R.C. Case No. 04(A) of 2017 for the offence registered under Section 120(B) read with Section 420 of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988.

The case of the prosecution in brief, according to the complaint made by the Deputy General Manager, Canara Bank, Circle Office, Patna before the Superintendent of Police, Economic Offence Wing, C.B.I., Ranchi is that during the course of risk based internal audit of Aurangabad Branch of Canara Bank, certain irregularities regarding non-availability of securities, non-availability of loan documents, sanction of loans beyond delegated power and violation of norms and guidelines of the bank were reported and instances of indiscriminate lending were also discovered. It is alleged that the Aurangabad Branch of Canara Bank had sanctioned various loans including loan against securities (Valuable Securities Loan i.e. V.S.L.) amounting to a sum of Rs. 1,710.04 lakhs without securities/deposits and without complying with the terms and conditions of sanction to M/s Hari Om Constructions, M/s Chandi Enterprises, M/s K.R. Automobiles, Mr. Pankaj Kumar Singh and Bijay Kumar Singh. It is alleged that the aforesaid Pankaj Kumar Singh and Bijay Kumar Singh are partners of M/s Hari Om Constructions and M/s Chandi Enterprises. It is also alleged that during the course of internal investigation of the Aurangabad Branch, it was revealed that the aforesaid loans were illegally sanctioned during the period 14.11.2011 to 08.07.2015 i.e. during the tenure of the then Branch In-Charge Shri. Keshav Kumar i.e. the petitioner herein. The petitioner is alleged to have sanctioned loans with ulterior motive and malafide intentions and he had apparently connived with the aforesaid borrowers and resorted to widespread irregularities/fraud/sanction of loans beyond the delegated power and violation of credit norms with the intention to cheat the bank. It is further alleged that during the course of investigation, the following irregularities were noticed:-

> “1. Granting of Value Secured Loans (VSL)/Overdraft (OD) against deposits/approved securities without availability of deposits/ other approved securities in the following accounts:
>
> a) M/s Hari Om Constructions-OD against deposits-Rs. 50.00 lakhs, 15 VSLs amounting to Rs. 850.00 lakh
>
> b) M/s Chandi Enterprises-3 VSLs amounting to Rs. 144.06 lakh
>
> c) Sri Pankaj Kumar Singh-4 VSLs amounting to Rs. 73.50 lakh
>
> d) Sri Bijay Kumar Singh-VSL of Rs. 49.00 lakh
>
> 2. Two Term Loans were sanctioned to M/s Hari Om Constructions amounting to Rs. 497.00 lakh Additional collateral security as per sanction is not obtained and amount released. Subordination of unsecured loan was not obtained. Repayment was fixed for a higher period than as per sanction. Additional EMT of Collateral Security not created. Further sanction was given for purchase of 10 numbers of HYVA but only 8 purchased.

3. Sri Pankaj Kumar Singh has been sanctioned with Canara Vehicle loan of Rs. 5.00 lakh and LHV of Rs. 17.70 lakh of which the Canara Vehicle loan has since been closed. Neither CGTMSE cover nor other collateral securities were obtained.
4. Sri Bijay Kumar Singh has been sanctioned with Canara Vehicle loan of Rs. 5.00 lakh and LHV of Rs. 17.70 lakh. Neither CGTMSE cover nor other collateral securities were obtained.
5. Smt. Jaya, w/o Sri Keshav Kumar is one of the partners in the firm M/s K.R. Automobiles to whom VSL/Loans were sanctioned without availability of deposits/other approved securities.
6. M/s Hari Om Constructions and M/s Chandi Enterprises are group accounts of M/s K.R. Automobiles where Smt. Jaya is a partner. VSLs were sanctioned to the group without availability of deposit/ other approved securities.
7. Substantial fund transfers from the account of M/s Hari Om Constructions to the Savings Account of Sri Ujjwal Narayan (brother-in-law of Sri Keshav Kumar) were observed.
8. VSLs were sanctioned beyond the delegated powers of the branch-in-charge.
9. VSLs sanctioned to following accounts wherein loan papers were not available:

a. M/s Hari Om Constructions

b. M/s Chandi Enterprises

c. Sri Pankaj Kumar Singh

d. Sri Bijay Kumar Singh

10. M/s Hari Om Constructions was sanctioned with Bank Guarantee limit of Rs. 3.00 crores wherein following irregularities were observed:

a. Original Bank Guarantees returned by the beneficiaries, are not available in the branch.

b. Bank Guarantees were not issued in System (CBS FCC Module). Further as per the BG Register, no Bank Guarantees were outstanding in the name of M/s Hari Om Constructions and group. However on scrutiny of the loan documents, two Bank Guarantees issued on behalf of M/s Hari Om Constructions for Rs. 8.45 lakh & Rs. 8.55 lakh were outstanding.

c. Stipulated margin of 30% was not available and applicable commission was also not collected."

Thus, it has been alleged by the informant that the petitioner, the then Branch In-Charge of the Aurangabad Branch of the Canara Bank had connived with the borrowers, perpetrated fraud upon the bank and exposed the bank to a wrongful loss to the tune of Rs. 1159.51 lakhs plus further interest. Accordingly, an FIR was registered by the CBI bearing RC0932017A0004 dated 09.08.2017 under Section 120B read with Section 420 of the Indian Penal Code and Section 13(2) read with Section 13(1) (d) of the Prevention of Corruption Act, 1988.

The learned counsel for the petitioner has submitted that the petitioner is innocent and has been falsely implicated in the present case. It is stated that as far as M/s Hari Om Construction is concerned, a chart has been furnished at page no. 12 to 15 of the present bail petition wherein the accounts mentioned at serial no. 1 to 18 would show that the said accounts have been closed, meaning thereby that no irregularity has been found inasmuch as there is no outstanding amount to be paid by the said M/s Hari Om Construction. It is stated that as far as serial no. 19 to serial no. 30 of the aforesaid chart is concerned, which also forms part of the charge sheet, the said loan amounts were neither sanctioned nor disbursed by the petitioner. The learned counsel for the petitioner has further submitted that as far as the loans advanced to M/s Chandi Enterprises, Bijay Kumar Singh and Pankaj Kumar Singh are concerned, page nos. 6 to 14 of the supplementary affidavit filed by the petitioner in the present case would show that money is being regularly deposited in the account with the object to liquidate the outstanding dues and since Bijay Kumar Singh and Pankaj Kumar Singh are partners in M/s Hari Om Construction, the said deposit is also being bifurcated and appropriated in the accounts of the said Bijay

Kumar Singh and Pankaj Kumar Singh with a view to liquidate the outstanding loan and as recent as on 31st December, 2020, certain transactions have taken place in the said account, thus the said accounts are live and not dormant. As far as M/s K.R. Automobiles is concerned, it has been submitted by referring to the chart annexed to the FIR at page No. 58 of the present petition that the outstanding liability has been shown to be NIL. Lastly, it has been submitted by the learned counsel for the petitioner by referring to page no. 30 of the supplementary affidavit filed by the petitioner in the present case that all the loans advanced to the aforesaid borrowers are secured. Thus, in nutshell, it is the submission of the learned counsel for the petitioner that the petitioner is being falsely implicated in the present case and there has been no misappropriation or fraud qua the petitioner herein, therefore, he is liable to be admitted to the privilege of anticipatory bail.

Per contra, the learned counsel for the C.B.I. Shri. Bipin Kumar Sinha has submitted that the allegations leveled against the petitioner have been investigated by the C.B.I. and a charge sheet dated 17.04.2019 has also been filed by the C.B.I. against the petitioner and other accused persons under Section 120B r/w Sections 420 and 409 of the Indian Penal Code and Section

13(2) read with Section 13(1)(d) of the Prevention of Corruption Act, 1988. The learned counsel for the C.B.I. has submitted that a bare perusal of the aforesaid charge sheet would show that the petitioner had joined Canara Bank on 27.11.1996 as Probationary Clerk-cum-Typist whereafter he was promoted to the Junior Management Grade, Scale-I on 01.04.2005 whereupon he was promoted to the Middle Management Grade, Scale-II on 07.10.2011 and then he was posted at Canara Bank, Aurangabad Banch, Bihar as Branch In-Charge on 03.11.2011. Thereafter, the petitioner was transferred to Patna, South Gandhi Maidan Branch vide order dated 30.06.2015. The petitioner is stated to have been suspended on 12.08.2015, after detection of fraud in the Canara Bank, Aurangabad Branch and after completion of departmental enquiry against him, he has been dismissed from service with effect from 06.03.2017. It is stated that investigation by the C.B.I. has disclosed that the petitioner's credit sanctioning power in respect of valuable security loans to any borrower pertaining to loans/advance against bank own deposit was limited to 20 lakhs in between the period 01.11.2011 to 16.05.2014 and 50 lakhs in between the period 17.05.2014 to 19.06.2015 and his power to advance loans against other approved securities was limited to five lakhs. The learned counsel for the CBI has further submitted that the aforesaid Bijay Kumar Singh and Pankaj Kumar Singh were active partners of the firm M/s Hari Om Construction during the relevant period and the petitioner in criminal conspiracy with them had sanctioned, disbursed and got disbursed valuable security loans to M/s Hari Om Construction beyond his delegated powers and during the period 26.06.2012 to 19.06.2015, 41 numbers of valuable security loans totaling to a sum of Rs. 9,51,03,261 were granted to M/s Hari Om Construction by Canara Bank, Aurangabad Branch, however, as on 19.06.2015, the said M/s Hari Om Construction had fixed deposits of a meager sum of Rs. 2,29,49,402/- which were insufficient to secure the outstanding valuable security loans granted to M/s Hari Om Construction. The investigation has also revealed that out of the said 41 valuable security loan account of M/s Hari Om Construction, 13 numbers of valuable security loans were granted without any corresponding security. It has further been revealed during the course of investigation that the aforesaid Bijay Kumar Singh and Pankaj Kumar Singh intentionally and dishonestly applied for valuable security loans (VSL) without submitting any security and obtained valuable security loans from Canara Bank in connivance with the petitioner and the petitioner dishonestly and fraudulently, by abusing his official position as public servant and by committing criminal breach of trust as public servant of the bank allowed transfer of Rs. 6,57,20,000/- to the accused private persons without following the norms of the bank and without obtaining corresponding security such as fixed deposit/NSC etc. and the amount so disbursed to M/s Hari Om Construction were misappropriated by its partners namely Bijay Kumar Singh and Pankaj Kumar Singh whereafter the loan accounts turned N.P.A. During investigation it has also transpired that most of the valuable security loans sanctioned by the petitioner to M/s Hari Om Construction have not been repaid causing wrongful loss to the bank and corresponding wrongful gain to M/s Hari Om Construction. It has also been detected that M/s Hari Om Construction was having an overdraft account limit of Rs. 50,00,000/- (Rs. fifty lakhs) with the Canara Bank and most of the valuable security loans were granted and disbursed in the overdraft account with the modus operandi of getting the overdraft account rolling without being detected and without the approval of Circle Office, Canara Bank.

The learned counsel for the C.B.I. Shri Bipin Kumar Sinha has further submitted that investigation has also disclosed that the petitioner had dishonestly and fraudulently sent a proposal for term loan of M/S Hari Om Construction to the Circle Office, Canara Bank, Patna on 24.12.2014 for purchase of construction equipments and extension of bank guarantee wherein he had dishonestly concealed actual facts and had only mentioned the outstanding liability of M/s Hari Om Construction to the tune of Rs. 47.25 lakhs in the overdraft account and Rs. 189.76 lakhs as bank guarantee, however, he had concealed the fact that there was a huge outstanding liability of Rs. 4.33 crores plus accumulated interest in the VSL accounts and on account of this misrepresentation by the petitioner, a term loan of Rs. 281 lakhs was sanctioned for purchase of equipments. It is further submitted that during the course of investigation several irregularities and concealment by the petitioner resulting in sanction and disbursement of term loans to the private accused persons has also come to light. It has also been pointed out that during the course of investigation it has been detected that various bank guarantees were issued by the Canara Bank, Aurangabad Branch during the period 15.02.2012 to 09.06.2015, however, commission on bank guarantees were not collected by the petitioner in a dishonest and fraudulent manner at the time of issuance of bank guarantee causing loss to the bank to the extent of Rs. 7,25,161/- and corresponding wrongful gain to the private parties. The learned counsel for the C.B.I. has also pointed out that during investigation it has come to light that VSL were also given to M/s Chandi Enterprises in an illegal manner by the petitioner and out of five loan accounts one loan account of Rs. 60 lakhs were misappropriated by the aforesaid Bijay Kumar Singh and Anil Kumar Singh causing loss to the Canara Bank to the tune of Rs. 69.57 lakhs. Similarly investigation has disclosed that the petitioner had dishonestly and fraudulently granted VSL of Rs. 49 lakhs to Bijay Kumar Singh, partner of M/s Hari Om Construction without any security and further an overdraft account was opened in the name of Bijay Kumar Singh for Rs. 24 lakhs which was sanctioned by the petitioner on 20.04.2013, beyond the powers delegated to him. As far as Pankaj Kumar Singh is concerned, the petitioner is alleged to have dishonestly and fraudulently granted three VSLs totaling to a sum of Rs. 70 lakhs without proper documentation and corresponding deposit/security. As far as M/s K.R. Automobile is concerned, various VSLs were dishonestly and fraudulently advanced by the petitioner without proper security. The learned counsel for the CBI has submitted that the irregularities committed by the petitioner are mentioned in detail in the charge sheet filed by the CBI, hence require no further elaboration. The learned counsel for the C.B.I., in reply to the arguments advanced by the learned counsel for the petitioner, has submitted that it is not relevant that the accused borrowers have paid some portion of their liability which they owe towards Canara bank in as much as borrowers are bound to repay loan amount obtained by them, however what is relevant is that the illegal dishonest and fraudulent action of the petitioner clearly shows the presence of mensrea. It is further submitted that the wife of the petitioner had also become a partner in the accused borrower company i.e. M/s K.R. Automobiles and his brother-in-law and other relatives had also been engaged in with the beneficiary firm M/s. Hari Om Construction. Thus, in nutshell, it is submitted that the complicity of the petitioner in the alleged offence is writ large from the records.

Having heard the learned counsel for the parties and having gone through the materials on record as also the materials available in the case diary, apart from perusing the charge sheet filed by the C.B.I. in the present case, this Court would first of all like to advert to the principle of law laid down by the Hon'ble Apex Court with regard to the scope of the courts delving deep into the merits of the matter while considering an application for bail. In this regard, this Court would first refer to the judgment rendered by the Hon'ble Apex Court reported in ***(2018) 12 SCC 129 (Anil Kumar Yadav vs. State NCT of Delhi & others)***; paragraph nos. 14 and 15 whereof are reproduced herein below:-

> *"**14.** We have given our thoughtful consideration to the rival submissions made by the counsel appearing on either side. The point falling for consideration is whether the Sessions Court ignored the relevant materials while granting bail to the appellant-accused and whether the order of the Sessions Court suffered from serious infirmities, justifying interference by the High Court in exercise of judicial discretion.*
>
> ***15.** As held in Puran case [Puran v. Rambilas, (2001) 6 SCC 338 : 2001 SCC (Cri) 1124], while considering the question of grant of bail, court should avoid consideration of details of the evidence as it is not a relevant consideration. While it is necessary to consider the prima facie case, an exhaustive exploration of the merits of the case should be avoided. We, therefore, consciously refrain from considering the merits of the materials/evidence collected by the prosecution.*

It would also be relevant to refer to yet another judgment rendered by the Hon'ble Apex Court in the case of ***State of***

***Orissa vs. Mahimananda Mishra*** reported in ***(2018) 10 SCC 516***; paragraph nos. 12, 13 and 15 whereof are reproduced herein below:-

> *"**12.** Though this Court may not ordinarily interfere with the orders of the High Court granting or rejecting bail to the accused, it is open for this Court to set aside the order of the High Court, where it is apparent that the High Court has not exercised its discretion judiciously and in accordance with the basic principles governing the grant of bail. (See the judgment of this Court in Neeru Yadav v. State of U.P. [Neeru Yadav v. State of U.P., (2014) 16 SCC 508 : (2015) 3 SCC (Cri) 527] and Prasanta Kumar Sarkar v. Ashis Chatterjee [Prasanta Kumar Sarkar v. Ashis Chatterjee, (2010) 14 SCC 496 : (2011) 3 SCC (Cri) 765] ). It is by now well settled that at the time of considering an application for bail, the Court must take into account certain factors such as the existence of a prima facie case against the accused, the gravity of the allegations, position and status of the accused, the likelihood of the accused fleeing from justice and repeating the offence, the possibility of tampering with the witnesses and obstructing the courts as well as the criminal antecedents of the accused. It is also well settled that the Court must not go deep into merits of the matter while considering an application for bail. All that needs to be established from the*

*record is the existence of a prima facie case against the accused.*

***13.*** *Keeping in mind the aforementioned principles, we are of the view that the High Court was not justified in going into the evidence on record in such a depth which amounts to ascertaining the probability of the conviction of the accused. On the other hand, the High Court has failed to appreciate several crucial factors that indicate that it was highly inappropriate to grant bail in favour of the respondent.*

***15.*** *Having regard to the totality of the facts and circumstances of the case and for the reasons mentioned supra, the impugned judgment [Mahimananda Mishra v. State of Orissa, 2017 SCC On Line Ori 900 : 2017 Cri LJ 4711] of the High Court granting an order of bail in favour of the respondent herein is liable to be set aside. Accordingly, the same is hereby set aside. The respondent Mahimananda Mishra, s/o Late Rabindranath Mishra, r/o Odia Bazar, PS Dargha Bazar, District Cuttack (Orissa), be taken into custody forthwith."*

Thus this Court finds that while considering the question of grant of bail, not only detailed consideration of the evidence should be avoided since it is not a relevant consideration but the defense of the accused can also not be looked into inasmuch as what is to be considered is the FIR, case diary, charge sheet and the materials available on record.

Having regard to the materials available on record and upon a bare perusal of the FIR in question, the case diary produced by the learned counsel for the CBI and the charge sheet dated 17.04.2019, this Court finds that the petitioner herein was the then Branch Manager of the Canara Bank at Aurangabad Branch at the relevant time and ample materials are available on record to prima facie show that he dishonestly and fraudulently sanctioned and disbursed valuable security loans to M/s Hari Om Construction, M/s Chandi Enterprises-Hari Om Construction (JV), M/s K.R. Automobile, Bijay Kumar Singh and Pankaj Kumar Singh without availability of deposits/ security and that too beyond delegated powers, he engaged in criminal breach of trust and by abusing his official position caused wrongful loss to the tune of Rs. 8,69,59,342/- to the Canara Bank, he, in criminal conspiracy with Bijay Kumar Singh and Pankaj Kumar Singh, had forwarded term loan proposal to the Circle Office, Canara Bank, Patna by dishonestly concealing existence of valuable security loan already advanced to M/s Hari Om Construction, thereby cheating the Canara Bank to the tune of Rs. 6,90,23,542/-, causing wrongful loss to the Canara Bank and corresponding wrongful gain to the accused persons and further he did not collect commission on the bank guarantees issued to M/s Hari Om Construction and obtained pecuniary advantage from M/s Hari Om Construction in criminal conspiracy with other accused persons. Therefore, this Court finds that a prima facie case for the offences alleged is definitely made out as against the petitioner, hence considering the gravity of the allegations leveled against the petitioner, I do not find the present case to be a fit case for grant of anticipatory bail petition, accordingly, the instant Bail petition stands dismissed.

**(Mohit Kumar Shah, J)**

S.Sb/-

| | | | |
|---|---|---|---|
| **U** | | T | |