

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25810 of 2020

Arising Out of PS. Case No.-545 Year-2017 Thana- BHAGALPUR KOTWALI District-
Bhagalpur

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AJAY KUMAR PANDEY, S/o Sri Rameshwar Pandey, Resident of Mohalla-
Masakchak, Sarat Chand Path, P.S.- Adampur, Dist- Bhagalpur.

... .. Petitioner/s

Versus

THE CENTRAL BUREAU OF INVESTIGATION (C. B. I), PATNA Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Shekhar Singh, Adv.
		Mr.Uday Pratap Singh, Adv.
For the Opposite Party/s :		Mr.Bipin Kumar Sinha, Adv.

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

9 04-01-2021 This application for grant of regular bail has been filed under Sections 439 and 440 of the Code of Criminal Procedure, 1973 as the petitioner is in custody in connection with RC 07(A)/2018 giving rise to Special Case No. 04 of 2020, which is being investigated by the Central Bureau of Investigation (CBI).

2. Initially, the case was registered as Kotwali (Bhagalpur) P.S. Case No. 545 of 2017 disclosing commission of offences under Sections 409, 420, 467, 468, 471, 120-B and 34 of the Indian Penal Code, investigation of which was subsequently made over to the CBI along with several other similar cases relating to illegal transfer and misuse of funds



from the State Government bank accounts in the districts of Bhagalpur and Banka in fraudulent and conspiratorial manner. A notification was issued on 24.08.2017 by the Home Department, Government of Bihar, according consent under Section 6 of Delhi Special Police Establishment Act, 1946 extending the powers and jurisdiction of the members of Delhi Special Police Establishment (in the present case CBI) to the whole of the State of Bihar for investigation into the aforesaid case.

3. Be it noted that the present criminal case is a tip of the iceberg and is one of at least twenty three cases which were initially registered by the State Police in 2017 and subsequently handed over to the CBI in 2018 for investigation. It can be noticed from the statement made in paragraph 3 of the application that the petitioner himself has been implicated in seven cases other than the present one. This case is a part of infamous scandal notoriously known as 'Srijan Scam', infamous for the clandestine manner in which offenders managed to plunder Government money right under the nose of the officials, for years together in a well-knit fashion with all arrangements in place to maintain a cover over huge transactions. The facts of the present case are illustrative from the perspective of the scam at larger level which furnish an overview how surreptitiously



huge public money was fraudulently misappropriated in a well hatched up plan.

4. The CBI has submitted charge-sheet against the petitioner and some other persons in the present case, a copy of which has been brought on record by way of a counter affidavit filed on behalf of the CBI. The *modus operandi* of the scam can easily be discerned from the charge-sheet submitted by the CBI, which indicates that a cooperative society was registered in the name of Srijan Mahila Vikash Sahyog Samiti Limited (SMVSSL), Sabour, Bhagalpur in the year 1996. One Manorma Devi was admittedly the Secretary of the cooperative society, who, it is said, died few months before the fraudulent misappropriation of public money came to the fore leading to registration of slew of criminal cases. The present criminal case pertains to 36 payment orders/ demand drafts issued in favour of the Deputy Development Commissioner(DDC), Bhagalpur which were diverted in the accounts of SMVSSL in Bank of Baroda and Indian Bank, Bhagalpur by the bank officials amounting to a sum of Rs. 23.74 crores. According to prosecution's case in addition to the aforesaid, there were 26 instances of unauthorised withdrawals from the accounts of DDC in both the banks. The cheques which were used for such



fraudulent unauthorised withdrawals were not issued for the respective accounts of the DDC/ District Rural Development Agency(DRDA), Bhagalpur rather the bank officials used surrendered cheques instead, other than the cheque-series issued for DDC account. The amounts, thus, withdrawn from the DDC accounts in both the banks were deposited/ transferred in the accounts of SMVSSL on various dates. Such unauthorised withdrawals amounts to Rs. 52 crores. So as to cover up the diversion and fraudulent withdrawals of the amounts there were 168 instances of unauthorised deposits made in the account of DDC from the account of SMVSSL in both the banks so that the cheques issued by the DDC might not get dishonoured. The unauthorised deposits amounted to a sum of Rs. 80.40 crores. Apparently, the fraud was being committed by diverting the public money meant to be credited in the account of DDC/ DRDA, Bhagalpur and further huge amount of money was being withdrawn fraudulently and systematically from the accounts of DDC/ DRDA for being deposited in the account of SMVSSL.

5. The petitioner, at the relevant point of time, was serving as Clerk in the Indian Bank, Bhagalpur and he is said to be a maker of some of the cheques through which a sum of Rs. 16 crores had been transferred in the account of SMVSSL from



the account of DDC and was also maker of cheques by which a sum of Rs. 18.60 crores had been deposited by the SMVSSL in the account of DDC. It is also alleged against him that a sum of Rs. 2 lakhs had been transferred to the account of one Karishma Sharma, an employee of V. Connect Holiday Private Limited which was issued by Manorma Devi, the Secretary of SMVSSL by which the petitioner had managed a tour package of Ooty, Mysore etc.

6. While denying the allegation that the petitioner had been benefited by the SMVSSL by receiving a cheque of Rs. 2 lakhs in the name of one Karishma Sharma, an employee of V. Connect Holiday Private Limited and a distant relative of the petitioner, it has been asserted in the application seeking regular bail that, as a matter of fact, SMVSSL was popular in the locality of Bhagalpur as 'self help credit society limited' and was involved in banking also by providing 2% more interest in comparison to other banks on deposits. Therefore, the petitioner asserts, his parents had opened their accounts in SMVSSL and had deposited their savings through cheques in their accounts. On maturity of the said deposits, the family members had decided a tour which was sponsored by his father by providing his deposits and accordingly the amount was credited in the



account of Karishma Sharma.

7. The aforesaid stand of the petitioner taken in the bail application itself unfolds the story that SMVSSL was running a banking business and was providing 2% more interest to the depositors in comparison to other banks.

8. In the aforesaid background, the facts which have emerged during the course of investigation, as is evident from paragraph 16.3 of the charge-sheet, need to be taken note of. The investigation is said to have revealed that SMVSSL had not obtained any licence from the Reserve Bank of India, which is an essential precondition for a body to undertake banking business. Statutory provisions under Section 56 read with Section 7 of the Banking Regulations Act, 1949 prohibits a cooperative society other than a cooperative bank from using as part of its name or in connection with business of any of the words viz. bank, banker or banking and further proscribes a cooperative society from carrying on business of banking in India unless it uses as part of its name at-least of such words. Further a cooperative society cannot carry on banking business in India unless it is a cooperative bank and holds a licence issued in that regard by the Reserve Bank of India.

9. Visibly thus, a cooperative society, namely,



SMVSSL was fraudulently running a banking business, defying statutory provisions with the aid of public money getting diverted and fraudulently deposited into its account. These fraudulent transactions were taking place at-least from the financial year 2008-09. The outcome of investigation by the CBI as against the petitioner is that he used to bring cheques and vouchers from the SMVSSL office and fill them in his own handwriting. He was the maker of several entries through which the funds were diverted from the account of DDC and deposited in the account of SMVSSL. In course of time he reverted back the deposits in the account of DDC from SMVSSL account. According to the CBI, the petitioner received cheque books fraudulently issued for the account of DDC and handed over the same to Manorma Devi for illegal withdrawal of money from SMVSSL account. From the finacle system of Indian Bank, it was learnt that the petitioner had entered nine transactions on various dates for illegally withdrawing 16 crores from the account of DDC and depositing them in the account of SMVSSL. He was also the maker of 27 transactions amounting to Rs. 18.60 crores through which the funds were reverted back in the account of DDC from the account of SMVSSL. There is oral testimony collected by the CBI to the effect that the



petitioner was close associate of Manorma Devi and he used to pressurize newly recruited staff for posting DDs and POs standing in favour of DDC, in the account of SMVSSL.

10. Mr. Shekhar Singh, learned counsel assisted by Mr. Uday Pratap Singh has argued that the petitioner is a small fry of the mammoth scam, he being merely maker of the cheques. According to him, the criminal liability, if any, is of checkers of the cheques and not the maker. According to him, the petitioner, as a passing Clerk, has merely discharged his duty as maker of the cheque in routine manner. According to him, cheques of substantial amount had crossed through two senior officials who are checkers and the final authority for passing the cheques. He has submitted that though it is the prosecution's case that one cheque book series of the three cheque books issued by the Indian Bank on 12.12.2009 was shown to have been delivered to the petitioner, there is no evidence to suggest receiving, by the petitioner, of the said cheque book.

11. Mr. Bipin Kumar Sinha, learned counsel appearing on behalf of the CBI opposing the prayer for regular bail has submitted that the petitioner was in the thick of the conspiracy of covert misappropriation of government funds whose role has been detected in many cases relating to Srijan Scam. According



to him, in nine cases charge-sheets have been filed against the petitioner. He has relied on Supreme Court's decision in case of ***Nimmagadda Prasad vs. Central Bureau of Investigation*** reported in **(2013) 7 SCC 466** to submit that economic offences constitute a class apart which need to be visited with a different approach in the matter of bail. He has argued with reference to the said decision that the economic offences having deep rooted conspiracy and involving huge loss of public funds, need to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby opposing serious threat to the financial health of the country. He has relied on certain orders passed by this Court refusing prayer for regular bail in cases arising out of Srijan Scam. He has also relied on another decision dated 15.09.2017 in case of ***Shivani Rajiv Saxena vs. Directorate of Enforcement and others*** of Delhi High Court in Bail Application 1518 of 2017 to contend that crimes, which constitute economic offences, stand on a graver footing which are professionally committed by white-collared people which need to be dealt with a heavy hand and releasing such person on bail may affect the community at large and will also jeopardize the economy of the country.

12. Mr. Sinha, learned counsel for the CBI has rightly



relied on a Supreme Court's decision in case of *Nimmagadda Prasad* (supra), paragraphs 24 and 25 of which read thus :-

“24. While granting bail, the court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words “reasonable grounds for believing” instead of “the evidence” which means the court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt.

25. Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby



posing serious threat to the financial health of the country.”

13. The case involves misappropriation of huge public money in an organized manner by a private cooperative society apparently with the aid of public servants and functionaries of the bank.

14. Considering the magnitude of misappropriation of public money in an organized manner in which the fraud was committed for misappropriation of money for a period of nearly a decade, I am not inclined to grant the petitioner privilege of regular bail. The petitioner has been remanded in the present case on 17.02.2020. In the matter involving misappropriation of huge amount of public money, as indicated above, chance of an accused tampering with the evidence, influencing the witnesses and attempting to evade the course of trial are eminent. For the said reason also, I am not inclined to grant the petitioner privilege of regular bail.

15. This application is accordingly rejected.

16. Normally, I would have stopped here after having decided the petitioner's prayer for regular bail but in the wake of certain materials which came to fore during the course of hearing of the present case, I am constrained to make certain observations in relation to the investigation of this case and



other cases by the CBI.

17. During the course of hearing of the present case, the Court had desired to know from the CBI whether the main accused, the then Secretary of SMVSSL, Ms. Manorma Devi, who is accused in all the twenty three criminal cases, had been apprehended or not. My attention has been drawn by learned counsel to the charge-sheet to contend that said Manorma Devi and two other persons who had been found to have committed the offences, namely, Sitaram Ray, the then Clerk, Indian Bank, Bhagalpur and Sudarshan Prasad Kumar, the then Clerk, Bank of Baroda, Bhagalpur had already died and for the said reason charge-sheets were not being submitted against them. Date of birth of Manorma Devi has been mentioned as 12.10.1947 and date of death as 14.02.2017. Dates of death of co-accused Sitaram Ray and Sudarshan Prasad Kumar have not been mentioned in the charge-sheet.

18. In response to a query made by this Court, Mr. Bipin Kumar Sinha, learned counsel for the CBI informed this Court that the CBI considered Manorma Devi to have died for the purpose of investigation as she was shown dead in the FIR registered by the State police. Two clerks, one of the Indian Bank and the other of Bank of Baroda have also been treated to



have died. Manorma Devi has been portrayed in the charge-sheet as the main kingpin of the entire scam. The daughter-in-law of Manorma Devi, namely, co-accused M/s Rajni Priya became the Secretary/ authorised signatory of SMVSSL, allegedly, after the death of Manorma Devi. Said Rajni Priya and her husband Amit Kumar (son of Manorma Devi) have also been made accused, who availed pecuniary advantage of the said scam. Neither the son of the kingpin nor her daughter-in-law against whom, according to CBI itself, materials are there to prosecute, have not been apprehended. In relation to Rajni Priya, it has been mentioned that she did not join the investigation and remained absconder. One N.V. Raju has been described as very close associate of Manorma Devi, who used to fill up the forged cheques in his own handwriting or diverting the proceeds to the bank account of SMVSSL. He is said to have received Rs. 30 lakhs as pecuniary benefits from SMVSSL account for his services provided by him by filling 18 cheques for withdrawing funds from SMVSSL account. Forensic laboratory reports are said to have confirmed his handwriting over the cheques. He was one of the main conspirators of Srijan Scam. From the charge-sheet it appears that neither Rajni Priya nor Amit Kumar joined the CBI investigation and they are at large. Status of N.V.



Raju in column XXIX of the charge-sheet has been mentioned as 'NA'. It seems that he has also not been arrested.

19. This is to be noted that the State police had registered FIR on 22.08.2017 on the basis of the report of an enquiry committee dated 19.08.2017 constituted under the orders of the Deputy Development Commissioner, Bhagalpur dated 07.08.2017. It is not known as to when the officials had the inkling of this large financial scam taking place right under their nose. In the aforesaid strange circumstance, when it was pointed out on behalf of the CBI about the alleged death of the kingpin few months before the scam came to fore, which was seamlessly going on without any hindrance for nearly a decade, the Court wanted to know from Mr. Sinha, learned counsel for the CBI as to whether the CBI had enquired into and verified about the death of the said kingpin Manorma Devi. On his request the matter was adjourned to seek instructions from the concerned officer of the CBI. On instructions he has informed this Court that since in the FIR registered by the State police Manorma Devi was shown as dead and there was a death certificate available in this respect, the CBI has treated her to have died a natural death before lodging of the FIR. He also submitted before this Court on instructions that it was not within



the scope of investigation by the CBI to enquire into the death of Manorma Devi. According to him, the investigation, which was entrusted to the CBI by the State Government, was limited to misappropriation of public fund.

20. Keeping in mind the magnitude of the scam, which is admittedly the biggest financial fraud committed with public exchequer which the State of Bihar has so far witnessed, the Court found it to be quite surprising as to why, while examining conspiratorial aspect of the scam, the CBI did not consider it apt to verify and satisfy itself that death of Manorma Devi was 'in fact' and it was natural and not otherwise.

21. The situation made this Court request the learned Advocate General to join the virtual court proceeding for having his opinion on the scope of investigation by the CBI into Srijan Scam. Mr. Lalit Kishore, learned Advocate General was candid enough to inform this Court that it would be in the best interest that the matter relating to death of the kingpin Manorma Devi be enquired into and can be enquired into in view of mandate given to the CBI by the State Government to investigate/ supervise and enquire into the cases relating to illegal transfer and misuse of funds from the government bank accounts in fraudulent and conspiratorial manner.



22. The death of the alleged kingpin Manorma Devi may be a natural death. Her natural death could be one of the reasons for the scam coming to fore and being reported to the authorities, the main conspirator at the centre of the scam having left the scene after her death. This can be one of the possibilities. It is noteworthy that no material in the charge-sheet points out the crucial stage when the fraudulent transactions which were successfully going on for nearly a decade came to the knowledge of the officials leading to lodging of the FIRs.

23. Identification of the stage when officials noticed for the first time the fraudulent transactions of hundreds of crores of public money could have been crucial point and could have thrown adequate light on the conspiratorial aspect of the investigation. Had it become imminent for the conspirators and other offenders of the crime in the chain of fraudulent activities to let the fraudulent transactions surface, soon after death of Manorma Devi? The possibility of Manorma Devi having disappeared and feigned death cannot be completely ruled out for the reason that topmost investigating agency of the country, namely, CBI has so far not been able to locate her son and daughter-in-law who are also accused against whom there are serious charges of conspiracy and are beneficiaries of the scam.



Other main conspirator N.V. Raju has yet not been apprehended.

24. Considering huge stakes involved possibility of elimination of the kingpin Manorma Devi from the scene by any other means can also not be completely ruled out. The least, which was expected of the CBI, was to have satisfied itself about the genuineness and veracity of the fact that Manorma Devi had died a natural death before registration of the FIR by the State police.

25. Be that as it may, the Court is conscious of the settled legal position that investigation is the exclusive privilege and prerogative of the police, which is normally not interfered with even by the Constitutional Courts. The mode and manner in which an investigation is to be conducted are also within the domain of the Investigating Agency. The Courts ordinarily do not interfere in such matters.

26. The Supreme Court in case of *Manohar Lal Sharma vs. Principal Secretary and others* reported in (2014)2 SCC 532 has noted at the same time that the aim of investigation is ultimately to search for truth and bring the offender to book. A proper investigation into crime is one of the essentials of criminal justice system and an integral facet of law.

27. The reluctance shown on the part of CBI to make



endeavour to find out the truth and its failure to bring the main offenders having allegation of commission of economic offences at large scale has compelled this Court to consider as to whether the investigation into the criminal cases relating to Srijan Scam by the CBI needs monitoring by this Court.

28. It will be useful, in my opinion, to refer at this stage a three Judge Bench decision of Supreme Court in case of ***Amar Nath Chaubey vs. Union of India and others*** reported in ***2020 SCC Online SC 1019*** wherein taking note of all precedents on the point of privileges and duties of the police to investigate a crime, the Supreme Court has held in paragraph 8 as under :-

“8. The police has a statutory duty to investigate into any crime in accordance with law as provided in the Code of Criminal Procedure. Investigation is the exclusive privilege and prerogative of the police which cannot be interfered with. But if the police does not perform its statutory duty in accordance with law or is remiss in the performance of its duty, the court cannot abdicate its duties on the precocious plea that investigation is the exclusive prerogative of the police. Once the conscience of the court is satisfied, from the materials on record, that the police has not investigated properly or apparently is remiss in the investigation, the court has a bounden constitutional obligation to ensure that



the investigation is conducted in accordance with law. If the court gives any directions for that purpose within the contours of the law, it cannot amount to interference with investigation. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India and this Court has the bounden obligation to ensure adherence by the police.”(Underlined for emphasis)

29. In no uncertain terms, the Supreme Court has stated in case of **Amar Nath Chaubey** (supra) that once the conscience of the Court is satisfied from the materials on record that the police has not (i) investigated properly or (ii) apparently is remiss in investigation, the Court has bounden constitutional obligation to ensure that the investigation is conducted in accordance with law. For the said purpose, when the Court gives any direction within the contours of law, the same cannot amount to interference with investigation.

30. A fair investigation is, but a necessary concomitant of Articles 14 and 21 of the Constitution of India, the Supreme Court has laid down in case of **Amar Nath Chaubey** (supra).

31. As has been noticed in case of **Manohar Lal Sharma** (supra), the investigation/ inquiry monitored by the Court does not mean that the Court supervises such investigation/ inquiry. What is Court monitored investigation/



inquiry has been lucidly stated in paragraph 39 in case of ***Manohar Lal Sharma*** (supra), which reads as under :-

“39. However, the investigation/inquiry monitored by the court does not mean that the court supervises such investigation/inquiry. To supervise would mean to observe and direct the execution of a task whereas to monitor would only mean to maintain surveillance. The concern and interest of the court in such “Court-directed” or “Court-monitored” cases is that there is no undue delay in the investigation, and the investigation is conducted in a free and fair manner with no external interference. In such a process, the people acquainted with facts and circumstances of the case would also have a sense of security and they would cooperate with the investigation given that the superior courts are seized of the matter. We find that in some cases, the expression “Court-monitored” has been interchangeably used with “Court-supervised investigation”. Once the court supervises an investigation, there is hardly anything left in the trial. Under the Code, the investigating officer is only to form an opinion and it is for the court to ultimately try the case based on the opinion formed by the investigating officer and see whether any offence has been made out. If a superior court supervises the investigation and thus facilitates the formulation of such opinion in the form of a report under Section 173(2) of the Code, it will be difficult if not impossible for the trial



court to not be influenced or bound by such opinion. Then trial becomes a farce. Therefore, supervision of investigation by any court is a contradiction in terms. The Code does not envisage such a procedure, and it cannot either. In the rare and compelling circumstances referred to above, the superior courts may monitor an investigation to ensure that the investigating agency conducts the investigation in a free, fair and time-bound manner without any external interference.”

32. **Manohar Lal Sharma** (supra) case related to Coal Block Scam. The Supreme Court underlining the significance of the Court monitored investigation observed that Court monitored investigation in a matter of huge magnitude, such as, Coal Block Scam shall help in moving the machinery of the investigation at an appropriate pace and its conclusion with utmost expedition ‘without fear or favour’.

33. Mr. Bipin Kumar Sinha, learned counsel for CBI, has referred to a decision of the Supreme Court in case of **Sushila Devi vs. State of Rajasthan and others**, reported in (2014) 1 SCC 269, to submit that since charge-sheet has been submitted in the present case, no court monitoring of the investigations is needed. Paragraph 28 of the said decision reads as under : -



“28. After analysing all these decisions, it appears to us that this Court has already in a catena of decisions held and pointed out that the monitoring of a case is continued till the investigation continues but when the investigating agency, which is appointed by the court, completes the investigation, files a charge-sheet and takes steps in the matter in accordance with the provisions of law before a competent court of law, it would not be proper for this Court to keep on monitoring the trial which is continuing before a competent court. Accordingly, we are of the opinion that since the investigation has already been completed, charge-sheet has been filed, trial has already commenced, it is not necessary for this Court to continue with the monitoring of the case in question.”

34. The Supreme Court in case of ***Sushila Devi*** (supra) noticing the fact that the CBI had completed the investigation, filed charge-sheet and since the trial had already commenced, it was not found necessary for the Supreme Court to continue with the monitoring of the trial of the cases. The present case is one of many cases, which arise out of Srijan Scam. Since this Court is of the view that conspiratorial angle of investigation has not been gone into in appropriate detail, court monitoring of investigation of the cases is required in the Court's opinion.

35. In view of the foregoing discussions based on the



materials on record, I am of the *prima facie* view that the CBI is apparently remiss in investigation on some crucial aspects which go to the root of the matter. Considering the huge magnitude of the Scam, the investigations of the cases arising out of the Scam deserves monitoring by this Court.

36. Let this matter be placed before Hon’ble the Chief Justice in the light of the above noted observations for considering the matter to be taken up on judicial side for court-monitored investigation of cases arising out of Srijan Scam.

(Chakradhari Sharan Singh, J)

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