IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31962 of 2020

Arising Out of PS. Case No.-16 Year-2012 Thana- C.B.I CASE District- Patna

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Rajesh Kumar (Male aged about 48 years) son of Hari Narayan Singh R/o village Rampur Ramahar P.S. Jandaha District Vaishali.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar, Advocate Mr. Brij Behari Tiwary, Advocate Mr. Naresh Dixit, Advocate
For the CBI	:	Mr. Bipin Kumar Sinha, Advocate
For the PNB	:	Mr. Suresh Prasad Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL ORDER

7 06-04-2021 Heard learned counsel for the petitioner, learned counsel for the Central Bureau of Investigation (hereinafter referred to as 'the CBI') and learned counsel for the Punjab National Bank.

The petitioner has filed the instant application for grant of regular bail in connection with Special Case no. 9 of 2012 (arising out of case no. RC 16A/2012) registered under sections 420, 409, 467, 468, 471 and 120B of the Indian Penal Code and section 13(2) read with section 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

As per allegation in the FIR based on the letter dated 13.7.2012 written by the Chief Manager of the Punjab National

Bank to the Superintendent of Police, CBI the accused Sunil Kumar Jaiswal and Smt. Nita Keskar Choudhary were the directors of Ms. Vaishali Trading Pvt. Ltd at the time of sanction of loan. The petitioner was a guarantor who furnished personal guarantee and mortgaged the property mentioned in the FIR. Subsequently on retirement of one of the directors, he became a director of the company. It is stated that the accused persons including the petitioner herein misappropriated the amount of loan for their personal use. The account of the borrower company became NPA and the Bank started taking action under the SARFAESI Act, 2002. It was during taking of possession of the securities that it transpired that the above title deeds were forged documents. The Bank was cheated of an approximate amount of Rs. 3.5 crores.

It is submitted by learned counsel for the petitioner that so far as the petitioner is concerned, he was merely a caretaker on a petrol pump owned by co-accused Arvind Kumar Choudhary. It was on the direction of the said Arvind Kumar Choudhary that the petitioner signed on a few documents without knowing the contents thereof. It subsequently transpired that he had been made liable as a guarantor to the loan availed by Ms. Vaishali Trading Pvt. Ltd from the Punjab National

Bank. It is submitted that at no point of time did the petitioner furnish any property papers for mortgage. He has neither played any role nor has he benefited in any manner. It is submitted that no amount has been transferred in the personal account of the petitioner. The case is based on documentary evidence and with completion of the investigation and submission of charge sheet, the petitioner always having cooperated with the investigating agency, should be enlarged on bail and that he would be ready to abide by all the conditions which may be laid down by the Court. Learned counsel for the petitioner places reliance on various paragraphs of the judgment in the case of P. Chidambaram vs Directorate of Enforcement [(2020) 1 BLJ 200(SC)]. It is further submitted that so far as one of the directors namely Nita Keskar Choudhary is concerned, this Court by order dated 19.4.2016 (Annexure 2) passed in Cr. Misc. no. 38522 of 2014 has been pleased to quash the entire proceeding as also the order of cognizance dated 7.7.2014. Further, another co-accused Pramod Kumar Choudhary against whom also charge sheet has been submitted has been enlarged on bail by this Court by order dated 5.2.2015 passed in Cr. Misc. no. 106 of 2015. It is submitted that the entire case being one of documentary evidence, the investigation with respect to the petitioner having concluded and charge sheet having been submitted, no useful purpose would be served in keeping the petitioner in custody and thus, he be enlarged on bail.

The application for bail is opposed by learned counsel for the C.B.I as also learned counsel for the Punjab National Bank. Learned counsel for the C.B.I referring to the final report which is enclosed with the bail petition submitted that it was the petitioner who entered into conspiracy with the other accused persons with the common object to cheat the Punjab National Bank by applying and obtaining a bank loan on the basis of fake and forged documents. It is submitted that the investigation reveals that the petitioner being a business associate of co-accused Arbind Kumar Choudhary had stood as guarantor and with the intent to fraud the Bank, submitted fake/forge title deed in his name for creating equitable mortgage in banks favour. The petitioner dishonestly presented himself as owner of the property. Further, Pramod Kumar Choudhary acted as proprietor of the firm and it was with the assistance of Arvind Kumar Choudhary that the accounts were opened in the name of Ms. Standard Engineering Work in the Bank of India and State Bank of India. Arvind Kumar Choudhary was the introducer in opening of the said account and he is still absconding. It is submitted that the petitioner's application for anticipatory bail was rejected in the year 2013 and he was absconding till he was arrested on 6.3.2020. Charge sheet no. 25 of 2013 has been submitted on 11.12.2013 under sections 420, 409, 467, 468, 471 and 120B of the Indian Penal Code and section 13(2) read with 13(1)(c) and (d) of the PC Act, 1988. It is further submitted that the bail application of co-accused Ajay Kumar Jaiswal has been rejected by this Court vide order dated 2.12.2020 passed in Cr. Misc. no. 23646 of 2020 and that of Sumit Kumar Jaiswal has been rejected vide order dated 15.12.2020 passed in Cr. Misc. no. 23563 of 2020. So far as the order contained in Annexure 2 to the bail petition is concerned whereby the criminal prosecution as also the order taking cognizance of Nita Keskar Choudhary has been quashed, it is submitted by learned counsel that the CBI has preferred an appeal before the Hon'ble Apex Court against the said order and as per his instruction, operation of the order as contained in Annexure 2 has been stayed. It is prayed that in the facts and circumstances of the case, the application for bail of the petitioner be rejected.

Learned counsel appearing for the Punjab National Bank, in addition to the submissions made on behalf of learned counsel for the CBI submitted that in the facts of the case, the case of the petitioner cannot be equated to that of co-accused Nita Keskar Choudhary whose criminal prosecution has been quashed by the order as contained in Annexure 2. Referring to the order of the learned Court below rejecting the petitioner's application for bail it is submitted that the role of the petitioner as a guarantor to the loan given by the Punjab National Bank was crucial and cannot be ignored. It is submitted that as a result of the criminal conspiracy, not only the directors of the company but the officials of the Bank were also proceeded against, dismissed from service and they were made FIR named accused along with the advocate for the Bank. He relies on the judgment in the case of C.B.I v. Jagjit Singh [(2013) 10 SCC 686].

Having heard learned counsel for the parties and taking into consideration the materials on record as also the submissions made on behalf of the parties, it transpires that as per the charge sheet, the petitioner was the guarantor of the loan advanced by the Bank to Ms. Vaishali Trading Pvt. Ltd and in the said process he had provided fake and forged title deed bearing no. 2355 dated 26.4.2000 standing in his name for creating equitable mortgage in the bank's favour. It was at a subsequent stage, on the bank pursuing the matter under the SARFAESI Act that it transpired that the title deed were forged documents. The amount of loss caused to the Bank was approx Rs. 3.5 crores. Further, from the records it transpires that inspite of the application for anticipatory bail of the petitioner having been rejected in the year 2013 by this Court, he continued to remain at large and was arrested only on 6.3.2020. Thus, in view of the facts and circumstances of the case, the Court is not inclined to enlarge the petitioner on bail and the application is rejected.

(Partha Sarthy, J)

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