IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5710 of 2022

Arising Out of PS. Case No.-2 Year-2021 Thana- GANDHIMAIDAN District- Patna

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SANDIP KUMAR GUPTA @ SANDEEP KUMAR Son of Shambhu Nath Prasad Gupta Resident of Village - C.K. Road, P.s.- Nagar Arrah, Distt.- Bhojpur, At present, Kankarbagh, P.s.- Kankarbagh, Dist.- Patna.

... ... Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Abhishek Raja Son of Ashutosh Prasad Branch Manager, Kotak Mahindra Bank, Gandhi Maidan,
3. The Economic Offences Unit, Bihar, Patna. Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli Semor, Sr. Adv. Mr. Prince Kumar Mishra
For EOU	:	Mr. V.N. P. Sinha, Sr. Adv. Mr. Soni Srivastava, Adv.
For the Bank	:	Mr. Dayanand Singh, Adv
For the State	:	Mr. Chandrabhushan Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

9 18-05-2022 Heard the learned counsel for the parties concerned. .

The petitioner seeks bail in connection with Gandhi Maidan P. S. Case No.02 of 2021 registered for the offences punishable under Sections 419, 420, 467, 468 and 471 of the Indian Penal Code.

The learned senior counsel for the petitioner submits that the petitioner is in custody since 27.01.2021, he is a person with clean antecedent and charge-sheet has been submitted in this case.

The learned senior counsel for the petitioner further submits that the informant (Abhishek Raja), Branch Manager, Kotak Mahindra Bank Limited, Gandhi Maindan Branch alleges that one Shubham Gupta on 02.01.2021 at 3.15 P.M. came to the bank and requested for transfer of an amount of Rs.11,73,12,721/- from the account bearing No.1612046809 held in the name of CALA-cum-DLAO, Patna PD NHAI PIU, Gaya NH-83 to the account of B.S. Enterprises existing with ICICI Bank, Boring Road Branch, Patna. Further for the said purpose, Shubham Gupta submitted three RTGS forms, which were filled along with three letters on the letter head of NHAI along with a copy of the ADHAR Card of Pankaj Patel (DLAO). Further there was a handwritten note stating that “Ok to process” with forged signature of the informant. It is further alleged that the bank officials found that no cheques were accompanying the RTGS forms and further the signature on the RTGS forms were not matching with those of the authorized signatory of the bank. Thus, Shubham Gupta was informed that the transaction cannot be processed by the bank. Since the transaction appears suspicious, hence the bank sought confirmation from Pankaj Patel. Further Pankaj Patel vide his letter dated 02.01.2021 confirmed that no such request has been made by the office of the DLAO to transfer the said fund.

The learned senior counsel for the petitioner submits that petitioner is not named in the F.I.R. and from perusal of the allegations as alleged in the F.I.R., it would manifest that money was sought to be transferred in the account of B. S. Enterprises by Shubham Gupta. It is submitted that petitioner in no manner is related with the said B. S. Enterprises in any manner nor during the course of investigation, any material has come to even remotely connect the petitioner to the said enterprises. It is further submitted that Shubham Gupta has not disclosed about the petitioner nor even has whispered about him even remotely connecting him with the offence. It is next submitted that during the course of investigation, name of one Sahrukh Khan @ Riju transpired in the statement of Shubham Gupta and Sahrukh Khan disclosed that he is an employee of the petitioner based on which, the petitioner was roped in the case. It is further submitted that during the course of investigation, nothing has come to even remotely suggest that money from the account of NHAI was ever credited in the account of the petitioner or anyone related to him in any manner, though an amount of Rs. Thirty Five Lacs was deposited in his account maintained at Kotak Mahindra Bank on 16.10.2020 from Sharda Agro Agency maintained at ICICI Bank Limited. The learned senior counsel further submits that the said amount was wrongly credited in the account of the petitioner and subsequently, the amount was returned to the ICICI Bank by Kotak Mahindra Bank, as is evident from the letter issued by the Branch Manager, Kotak

Mahindra Bank Limited (Annexure-3 to the bail application).

It is next submitted that since the Branch Manager issued Annexure-3, as such, the petitioner became sanguine that the money wrongly credited in his account has been remitted back to the ICICI Bank, but later, the petitioner came to know that the Branch Manager, who had issued Annexure-3 with the help of Suraj Kumar withdrew the said amount of Rs. Thirty Five Lacs by using the cheques of the petitioner and purchased jewellery and at the same time, issued the said letter of remittance which prima facie demonstrates that the Branch Manager, Kotak Mahindra Bank indulged in forgery.

It is further submitted that since the petitioner was having his account in the Kotak Mahindra Bank and is a business man, as such, he was on friendly term with the Branch Manager and had even left signed cheques so that the same can be used in time of need, but the act of the Branch Manager of issuing Annexure-3 and at the same time withdrawing the said amount by using the signed cheque of the petitioner came as a surprise to the petitioner. The learned senior counsel submits that it is an admitted fact that the said amount of Rs. 35 lakhs came to be credited wrongly in the account of the petitioner and if the petitioner in any manner would have acted in the act of withdrawing the said amount from his account by using his own cheque then definitely the petitioner would have created an evidence against himself and thus would have been implicated very easily. It is thus submitted that no prudent man would act in a manner where he creates an evidence against himself and get implicated, this in itself demonstrates that it was the Bank Manager, who committed the illegal act by using the cheque of the petitioner without his knowledge. The learned senior counsel further submits that till date in the investigation, nothing has come to even remotely connect the petitioner with the offence relating to transfer of money from the account of NHAI to the account of the petitioner or any person related to him for which the present FIR was instituted. It is also submitted that apart from Shahrukh Khan @ Rizu, none of the accused persons who have been arrested in the present case have even whispered about the petitioner, it is next submitted that even Shahrukh @ Rizu has disclosed the name of the petitioner that he is an employee of the petitioner, how the said disclosure connects the petitioner with the offence has also not come during the course of investigation. The learned senior counsel further submits that the petitioner has only one account in Kotak Mahindra Bank bearing Account No. 1714309823, it is submitted that the said account is a disclosed account. Learned senior counsel thus submits that no prudent man would get any illegal amount credited in his disclosed account and thus get implicated easily as the same would also become an evidence against him. The learned senior counsel at the cost of repetition submits that the Investigating Agency till date has not been able to bring any cogent evidence to even remotely connect the petitioner with the offence and the entire investigation is hinging around suspicion.

The learned counsel appearing for the Bank Mr. Dayanand Singh reiterates his submission made earlier as recorded in the order dated 11.05.2022.

The learned senior counsel appearing for the EOU submits that in the account of the petitioner maintained at Kotak Mahindra Bank, an amount of Rs. 1 crore 32 lakhs and odd came to be deposited in between 28.07.2020 to 20.01.2021 for which the petitioner has to explain, it is next submitted that out of 1 crore 32 lakhs, an amount of Rs. 86 lakhs has been withdrawn and presently in the said account, an amount of Rs. 46 lakhs is lying. It is next submitted that the petitioner also has to explain with regard to 35 lakhs which came to be credited in his account, as aforesaid and which allegedly was withdrawn using the cheque of the petitioner, it is next submitted that during the course of investigation, it transpired that the petitioner was on a regular visiting term with the

Branch Manager of Kotak Mahindra Bank in sum and substance, the learned senior counsel submits that it is these materials which have come during the course of investigation which prima facie creates a suspicion against the petitioner regarding his involvement in the occurrence. The learned senior counsel for the petitioner rebuts the submissions of the learned senior counsel for the EOU and submits that the thrust of the allegation in the FIR is that money from the account of District Land Acquisition Officer has been siphoned off. It is next submitted that the Investigating Agency though is raising the aforesaid submissions but has not collected any material to even remotely collect the petitioner with the offence in the sense that the said amount of Rs. 1 crore 32 lakhs and odd was in any manner related with the offence alleged in the FIR. Learned senior counsel next submits that he reiterates the same submissions as aforesaid that no prudent man would allow any illegal transaction in his account and thus creates an evidence against himself. Learned senior counsel next submits that apart from suspicion, there is nothing in the case diary to even remotely substantiate that the petitioner in any manner was involved in the occurrence. It is next submitted that in the nature of allegation and investigation, in the event if the petitioner is finally acquitted how his period of incarceration would be compensated and in the event if the petitioner in trial is convicted he will serve the sentence.

Considering the fact that the petitioner is in custody since 27.01.2021, he is a person with clean antecedent and charge-sheet has been submitted and taking into consideration the submissions made by learned senior counsel for the petitioner, the petitioner, above-named, is directed to be released on bail on his furnishing bail-bonds in the sum of Rs.25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Court below where the case is pending in connection with Gandhi Maidan P.S. Case NO. 2 of 2021.

The application stands allowed.

(Satyavrat Verma, J)

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