

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18180 of 2022

Arising Out of PS. Case No.-6 Year-2018 Thana- C.B.I CASE District- Patna

SUBH LAXMI PRASAD @ SUBH LAKSHMI PRASAD @
SHUBHLAXMI PRASAD W/o Late Binoda Nand Prasad Resident of Village
- Rani Talab Road, Fatehpur, ang Vihar Apartment, Block C Near BCE, P.S.-
Sabour, Distt.- Bhagalpur.

... .. Petitioner/s

Versus

The Central Bureau of Investigation (CBI), New Delhi. Govt. Of India.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Uday Pratap Singh, Advocate
For the Opposite Party/s : Mrs. Nivedita Nirvikar, Senior Advocate (SC CBI)
Ms. Surabhi Nirmal, Advocate

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

5 27-09-2022 Heard learned senior counsel appearing on behalf of

the petitioner and learned senior counsel appearing on behalf of

C.B.I.

Let the defect(s), if any, be removed within a period
of four weeks from today.

The petitioner seeks bail in connection with Special
Case No. 11 of 2020 arising out of R.C. No. 6(A) of 2018 dated
12.06.2018, registered for the offence under Sections 34,
120(B), 409, 420, 467, 468 and 471 of Indian Penal Code
(arising out of Sabour P.S. Case No. 241 of 2017 dated
23.08.2017 registered under Section 120(B), 409, 420, 468 and
471 of Indian Penal Code), pending in Court of learned Special



Judge, CBI-II, Patna.

The accused/petitioner is named in the F.I.R. and is in custody since 31.01.2020.

The fact as set out in the F.I.R., alleges that the office bearers including the petitioner herein, created forged record and minutes of the meeting of Shrijan Mahila Vikas Sahyog Samiti Ltd. (hereinafter referred to as 'SMVSSL') and used the same as genuine for opening of the bank accounts, by concealing the facts, from appropriate authority, committing thereby criminal breach of trust, being a public servant and also committed cheating and dishonesty inducing delivery of property.

Learned counsel appearing on behalf of the petitioner submitted that petitioner is an innocent lady and has been falsely implicated in this case. In support of submission of false implication, it is submitted that for the only reason, as petitioner is the Chairman of the Samiti and one of the authorized signatory of bank accounts of SMVSSL, named in the present case. It is further submitted that, during the course of investigation, it is further surfaced that Smt Sarita Jha was also one of the authorized signatory of bank after the death of Smt. Manorma Devi. It is submitted that being Chairman of the



Samiti, role of petitioner was very limited as per Co-operative Law, where main decision was to be taken by Secretary. It is submitted that similarly situated accused namely, Sarita Jha has already been granted bail by one of the learned Co-ordinate Bench of this Court through Cr. Misc. No. 51547 of 2021 dated 28.04.2022, whereas one of the co-accused, namely, Pankaj Kumar Jha granted bail by Hon'ble Apex Court through Criminal Appeal No. 484 of 2020 (Arising out of SLP (Crl.) Nos. 1530 of 2020) dated 17.07.2020, considering the fact that investigation is complete. It is further submitted that investigation in this case is complete for which chargesheet has been submitted, as such, there is no chance of tapering with evidence. While concluding the argument, it is submitted that by taking note of all allegations in totality, in the background of legal proposition as laid by Hon'ble Supreme Court, while deciding the matter in *Nimmagadda Prasad Vs. Central Bureau of Investigation reported in (2013) 7 SCC 466*, this is a fit case to grant bail to the petitioner, where paragraph no. 24 of the judgement, observed as:

“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.”



A counter affidavit, in the present bail petition was filed by C.B.I. on 16.09.2022.

Learned senior counsel, Mrs. Nivedita Nirvikar appearing on behalf of the C.B.I. opposes the prayer of bail and submitted that the present case is a big scam dealing with the public money. It is submitted that large public money was misappropriated by the petitioner by signing cheques in collusion with other co-accused, but fairly conceded that number of accused persons have already been granted bail by this Court and also in agreement that co-accused, namely, Sarita Jha, having similar allegations, has already been granted bail by one of the learned Co-ordinate Bench of this Court through Cr. Misc. No. 51547 of 2021 dated 28.04.2022.

Learned senior counsel for the CBI has also relied upon a judgement of ***Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao***, reported in, ***(2012) 9 SCC 512***, where, it has been held by the Hon'ble Apex Court that:

“24. The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is



an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence”.

Learned senior counsel for the CBI has further relied upon a judgement of ***Central Bureau of Investigation Vs. V.C. Shukla and others***, reported in, ***(1998) 3 SCC 410***, where, it has been held by the Hon'ble Apex Court that:

“40. Following conclusion of our discussion on Section 34 of the Act we may now turn to the principle and scope of Section 10 of the



Act and its applicability to the entries in question.

This section reads as under:

“10. Things said or done by conspirator in reference to common design. —Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it.”

In dealing with this section in Sardul Singh v. State of Bombay [AIR 1957 SC 747 : 1958 SCR 161] this Court observed that it is recognised on well-established authority that the principle underlying the reception of evidence of the statements, acts and writings of one co-conspirator as against the other is on the theory of agency. Ordinarily, a person cannot be made responsible for the acts of others unless they have been instigated by him or done with his knowledge or consent. This section provides an exception to that rule, by laying down that an overt act committed by



any one of the conspirators is sufficient, (on the general principles of agency) to make it the act of all. But then, the opening words of the section make it abundantly clear that such concept of agency can be availed of, only, after the Court is satisfied that there is reasonable ground to believe that they have conspired to commit an offence or an actionable wrong. In other words, only when such a reasonable ground exists, anything said, done or written by any one of them in reference to their common intention thereafter is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. In Bhagwan Swarup v. State of Maharashtra [AIR 1965 SC 682 : (1964) 2 SCR 378] this Court analysed the section as follows:

“(1) There shall be a prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether



*it was said, done or written before he entered the conspiracy or after he left it; and
(5) it can only be used against a co-conspirator and not in his favour.*

Considering the facts and circumstances as mentioned above, as allegation against this petitioner, who is a lady, having no role attributed to control the affairs of the Samiti coupled with the fact that chargeheet has already been submitted, let the petitioner, above named, is directed to be released on bail in connection with Special Case No. 11 of 2020 arising out of R.C. No. 6(A) of 2018 (arising out of Sabour P.S. Case No. 241 of 2017) on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, CBI-II, Patna, subject to the following conditions:

“(i) Accused/Petitioner shall cooperate in the trial and shall be physically present on each and every date before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on medical ground of the petitioner, duly supported by the documents.



(ii) That one of the bailors shall be
the close family member of the petitioner.”

(Chandra Shekhar Jha, J)

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