IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37782 of 2021

Arising Out of PS. Case No.-17 Year-2017 Thana- C.B.I CASE District- Patna

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Praveen Kumar S/O Sri Vishnu Deo Chaudhary, Resident of Road No. 10, Magadh Colony, Opposite Hind Apartment, P.O. and P.S. Chandauti, District - Gaya- 823001.

... ... Petitioner/s

Versus

The Central Bureau of Investigation through its Superintendent of Police, Patna, Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. P.N. Shahi, Sr. Advocate
Mr.Mritunjay Kumar, Advocate

For the Opposite Party/s : Mrs. Nivedita Nirvikar, Senior Adv/SC, CBI

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL ORDER

11 10-08-2022 Heard learned counsel for the petitioner and learned counsel for the Central Bureau of Investigation.

Let the defect (s), as pointed out by the office, be removed within a period of four weeks from the date of resumption of physical filing and physical removal of defect.

In the present case, the petitioner seeks bail in connection with Special Case No. 4 of 2018 (R/C-17/A/17) arising out of Bhagalpur Kotwali P.S. (Tilkamanjhi) Case No. 513 of 2017 registered for the alleged offences under Sections 409, 420, 467, 468, 471, 120(B), 34 and 477A of the Indian Penal Code and Sections 13(2), 13(1) (d) of the P.C. Act, 1988.

As per the prosecution case, an amount of Rs.

4,85,42,000/- from Account No. 10010100013447 in March 2014, an amount of Rs. 10,92,57,512/- from Account No. 10010100015640 in April 2015, an amount of Rs. 11,09,27,235/- from Account No. 10010100013931 in November 2013, an amount of Rs. 5, 28, 65, 268/- from Account No. 10010100016181 in January 2017 were fraudulently diverted from the above said accounts of DDC-cum-CEO, Zila Parishad, Bhagalpur in Bank of Baroda to the account of Srijan Mahila Vikas Sahyog Samiti Ltd. (SMVSSL). It has been alleged that an amount of Rs. 16,00,89,751/- has been fraudulently diverted from Account No. 6115136905 in the name of DDC-cum-CEO, Zila Parishad, Bhagalpur in Indian Bank in March 2013 to the account of SMVSSL. It has also been alleged that an amount of Rs. 10,00,00,000/- was fraudulently transferred from the Account No. 10010100010844 of DDC-cum-CEO, Zila Parishad, Bhagalpur to the account of SMVSSL, against five cheques of rupees two crores each.

As regards to the role of the petitioner, investigation revealed that this petitioner worked as Assistant Branch Manager, Indian Bank, Bhagalpur Branch during the period August 2012 to August 2013. While working as Assistant Branch Manger, Indian Bank, Bhagalpur Branch, he entered into a criminal conspiracy with the co-accused and in furtherance of the criminal conspiracy, he checked and verified transaction pertaining to SBI Banker's Cheque No. 660404 amounting to Rs.8,79,06,070/- from Parking Account of the bank to the account of SMVSSL by abusing his official position and in violation of the guidelines of RBI dated 23rd January 2006 and Indian Bank. Thus, the amount of Rs.8,79,06,070/-, which was to be credited in the account of DDC cum CEO at Indian bank, Bhagalpur was dishonestly diverted to the Account No. 822726120 of SMVSSL and thereby misappropriated the said amount. Investigation also revealed that accused petitioner Praveen Kumar in furtherance of criminal conspiracy with his co-conspirators checked the transaction pertaining to SBI Banker's Cheque No. 661106 amounting to Rs.7,21,83,681/- into the Account No. 822726685 of SMVSSL by abusing his official position and in violation of the guidelines of RBI and Indian Bank. Thus, the amount of Rs.7,21,83,681/-, which was to be credited in the account of DDC cum CEO at Indian Bank, Bhagalpur was dishonestly diverted to the Account No. 822726685 of SMVSSL and thereby misappropriated it.

Learned senior counsel appearing on behalf of the petitioner submits that the petitioner is innocent and has been falsely implicated in this case. The petitioner though not named in FIR No. 513/2017, but has been made an accused in Special Case No. 04 of 2018. The petitioner was an Assistant Manager of Indian Bank, Bhagalpur during the period from 31.07.2012 to 07.08.2013. The specific allegation against the petitioner in the charge sheet that in furtherance of the criminal conspiracy, Shri Ajay Kumar Pandey, the then Clerk, Indian Bank, Bhagalpur instead of seeking clarification from the drawer, entered the said Banker's cheque for crediting the proceeds in the Parking Account of the Bank, which was passed by Shri Subrat Das, the then Assistant Manager, Indian Bank. Thereafter, on 22.03.2013, Shri Ajay Kumar Pandey by abusing his official position, fraudulently prepared a false transfer voucher for an amount of Rs.8,79,06,070/- from the Parking Account of the Bank to Account No. 822726120 of SMVSSL and the same was entered and passed by Shri Praveen Kumar, the then Assistant Branch Manager and approved by Shri D.S. Mishra, the then Branch Manger, Indian Bank by abusing their respective official position and in violation of the guidelines of RBI and Indian Bank. Thus, the amount of Rs.8,79,06,070/- which was credited in the account of DDC-cum-CEO at Indian Bank, Bhagalpur was fraudulently diverted to the account of SMVSSL and the same was misappropriated. Further allegation has been made against the petitioner that as a part of criminal conspiracy with Smt. Manorma Devi, Secretary and Smt. Sarita Jha, Manager, SMVSSL and the officers of Indian Bank, Bhagalpur, Shri Rakesh Kumar, Nazir, instead of depositing the proceeds of the above said Banker's cheque in the account of DDC-cum-CEO at Indian Bank, Bhagalpur fraudulently handed over the same to Smt. Sarita Jha. In furtherance of the criminal conspiracy, Smt. Sarita Jha presented the said Banker's cheque for crediting the proceeds in Account No. 822726685 of SMVSSL at Indian Bank, Bhagalpur Branch. In furtherance of the said criminal conspiracy, Shri Subrat Das entered the said Banker's cheque and Shri Praveen Kumar passed the same and fraudulently crediting the proceeds of Rs.7,21,83,681/- in the aforesaid account of SMVSSL and thus, the funds of Rs.7,21,83,681/- were fraudulently misappropriated. In sum and substance, the allegation against the petitioner is that he abused his official position in violation of the guidelines of RBI and Indian Bank, passed the Banker's cheque and fraudulently credited the proceeds of Rs. 7,21,83,681/- in the account of SMVSSL.

Learned senior counsel further submits that these allegations are bald and without any evidence born out of lack of knowledge about banking laws and practice. The petitioner is not the maker of the vouchers and nor is he responsible for crediting the proceeds of the Banker's cheque in the parking account of the bank, hence, no offence under Sections 409, 420, 467, 471 and 477A of the Indian Penal Code is made out against this petitioner. The entire allegation is based on suspicion and it is settled law that however strong the suspicion may be, it cannot take place of proof. Not a single document is available to indicate that the petitioner is involved in the offence.

Learned senior counsel further submits that the charge sheet has already been submitted in this case, but charges have not been framed and there is no likelihood of commencement of trial in near future. The charge sheet suggests that the only accusation of conspiracy has been levelled against the petitioner whereas the actual beneficiary was co-accused Manorma Devi, who was running the NGO. The CBI has failed to discover any motive to any action done by this petitioner while performing his official duty.

Learned senior counsel for the petitioner submits that earlier the petitioner filed Cr. Misc. No. 19904 of 2020, which was rejected vide order dated 02.02.2021 with liberty to the petitioner to renew his prayer for bail after two years of his judicial custody in the present case. He further submits that two years of judicial custody of the petitioner has already been completed on 16.05.2021 as the petitioner is in custody since 16.05.2019.

Learned senior counsel for the petitioner further submits that the co-accused Ram Krishna Jha has been granted bail by a Coordinate Bench of this Court vide order dated 27.05.2020 passed in Cr. Misc. No. 33334 of 2019. Another co-accused namely Subrata Das has also been granted bail by a Coordinate Bench of this Court vide order dated 16.09.2020 passed in Cr. Misc. No. 22914 of 2020. The co-accused Pankaj Kumar Jha has been granted bail by the Hon'ble Supreme Court vide order dated 17.07.2020 passed in Cr. Appeal No. 484 of 2020 (Arising out of SLP (Crl) No. 1530 of 2020). The co-accused Sarita Jha has also been granted bail by a Coordinate Bench of this Court vide order dated 04.03.2020 passed in Cr. Misc. No. 60402 of 2019. The other co-accused persons have also been granted bail in Cr. Misc. Nos.40816 of 2019 and 21698 of 2020.

Learned senior counsel for the petitioner further submits that the petitioner moved before the Hon'ble Supreme Court by filing Petition (s) for Special Leave to Appeal (Crl.)

No (s). 5853 of 2021, which was disposed of requesting the High Court to decide the same on merits preferably before 19.08.2022.

Learned Standing Counsel appearing on behalf of C.B.I. opposes the prayer for bail submitting that by abusing official position and in violation of the guidelines of the R.B.I and Indian Bank, an amount of Rs.8,79,06,070/-, which was to be credited in the account of DDC-cum-CEO at Indian Bank, Bhagalpur, was fraudulently diverted to the account of SMVSSL and the same was misappropriated by the co-accused and the petitioner. Learned counsel further submits that there is strong apprehension that the petitioner may influence the witnesses or even fly to other country with whom India has no extradition treaty, if he is enlarged on bail at this stage of trial.

Having regard to the submissions made hereinabove and considering the fact that the charge sheet has been submitted in this case and there is no likelihood of the start of the trial in near future and the petitioner is in custody since 16.05.2019 coupled with the fact that several other co-accused persons have been granted bail, the petitioner above named is directed to be released on bail on furnishing bail bond of Rs. 20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge-II, C.B.I., Patna in connection with Special Case No. 4 of 2018 (R.C. No. 17/A/2017), arising out of Bhagalpur Kotwali P.S. (Tilkamanjhi) Case No. 513 of 2017, subject to the conditions mentioned in Section 437(3) of the Code of Criminal Procedure and also the following conditions :

(i) One of the bailors will be the close relative of the petitioner.

(ii) The petitioner will remain present on each and every date fixed by the court below.

(iii) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bond of the petitioner will be liable to be cancelled by the court concerned.

(Arun Kumar Jha, J)

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