IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43499 of 2021

Arising Out of PS. Case No.-360 Year-2020 Thana- MUZAFFARPUR TOWN District- Muzaffarpur

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Pappu Kumar @ Pappu Sahni, Son of Umashankar Sahni, Resident of Village- Madhuban Kanti, P.S.- Minapur (Panapur O.P.), Distt.- Muzaffarpur.

... ... Petitioner/s

Versus

The State of Bihar ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Y. C. Verma, Sr. Advocate
Mrs. Priyanka Singh, Advocate

For the Opposite Party/s : Mr. Bal Mukund Prasad Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

8 05-07-2022 Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

Heard Mr. Y. C. Verma, learned senior counsel for the petitioner and learned APP for the State.

The petitioner seeks regular bail, who is in custody in connection with Town (Sikandarpur O.P.) P.S. Case No. 360 of 2020 registered for the offences punishable under Sections 420, 379, 467, 468, 471/34 of the Indian Penal Code and Sections 25(1-b) a/26/35 of the Arms Act.

As per prosecution case, it is alleged that during the course of investigation in connection with Brahmpura P.S. case no. 143 of 2020 and Sadar P.S. case no. 325 of 2020 some of the arrested miscreants disclosed that they are active members of the ATM fraud gang and one Pankaj Sahani and this petitioner are the gang leaders. Thereafter, on the disclosure of the petitioner from his house Rs.33,46,200/- cash, 80 gm gold ornaments, one country made pistol with cartridge and other articles have been recovered.

It is submitted by the learned senior counsel appearing on behalf of the petitioner that in fact the recovered amount is the hard earned money of the petitioner, his brother and his father, which have been obtained by selling their family land and through other means. In support of his contention, he filed a supplementary affidavit bringing on record an affidavit sworn by the father of the petitioner stating therein that as to how they have earned the money, which is said to have been recovered by the police. It is further submitted that in fact recovery has been made form a joint family house and cannot be said to be recovered from the exclusive possession of this petitioner. It is next submitted that this petitioner is in custody since 06.10.2020, though the investigation of the crime is already completed and the charge-sheet has been submitted. It is lastly submitted that the money, which is said to have been recovered cannot be said to be the money fraudulently withdrawn from the ATM, as there is no material that the seized money has been tallied with the money, which was kept in the ATM. It is also submitted that other similarly situated co-accused person, namely, Sunny Kumar, having similar allegation, has already been granted bail by a learned co-ordinate Bench of this Court in Cr. Misc. No. 24058 of 2021 vide order dated 24.11.2021, the copy of which has been brought on record by way of filing supplementary affidavit. It is also submitted that other persons, named in the F.I.R., have also been granted bail by different co-ordinate Benches of this Court.

On the other hand, learned APP for the State vehemently opposes the bail application and submits that the entire recovery has been made on the disclosure made by the petitioner and except the averments made that the recovered cash are being hard earned money and sale proceeds of immovable properties, no substantive documents are brought on record, which substantiate the submissions made on behalf of this petitioner. It is further submitted that during the course of investigation, the petitioner has confessed and categorically stated as to how this ATM fraud gang was operated by him and as to how he withdrawn the money from different ATMs. The petitioner also disclosed the name of his accomplice, who have been made accused in this case. Learned counsel for the State has drawn the attention of this Court towards the criminal antecedent of the petitioner, who has been found involved in nine other cases and most of them are relating to fraud, cheating and theft.

Having considered the submissions made on behalf of the parties and taking into consideration the specific accusation of this petitioner and the materials available during the course of investigation, which suggests the complicity of this petitioner and moreover the entire recovery, including the cash of Rs. 33,46,200/- has been made from the disclosure made by the petitioner from his own house and he is unable to show any substantive evidence that this money belongs to his family members, apart from the fact the petitioner is carrying multiple criminal antecedent, this Court is not persuaded to enlarge the petitioner on bail.

Accordingly, the present bail application for grant of bail is hereby rejected.

However, it is expected that the learned trial court will take all necessary steps to ensure conclusion of the trial at the earliest.

(Harish Kumar, J)

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