

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62467 of 2021

In
CRIMINAL MISCELLANEOUS No.67531 of 2019

Arising Out of PS. Case No.-733 Year-2019 Thana- SHASTRINAGAR District- Patna

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SUNIL KUMAR DHAWAN @ SUNIL DHAWAN @ SUNIL KUMAR S/O
LATE JAGAT PAL DHAWAN Resident of A1/147FF, Janak Puri, B-1SO
West Delhi, P.S.- Janakpuri, District- North New Delhi- 110058

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Central Selection Board of Constable Recruitment through its Officer on Special Duty, Sardar Patel Bhawan, 6th Floor, Block- A/626, Jawahar Lal Nehru Marg, Patna- 800023, Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	M/s Sanjay Singh, Sr. Advocate Vinod Kumar, Advocate
For the State	:	Mr. Mukesh Kumar Singh, APP
For the Board	:	M/s Pushkar Narain Shahi, Sr. Advocate Sanjay Pandey, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

11 23-02-2022 Heard learned counsel for the parties.

The petitioner has filed this application for modification of the order dated 17.12.2019 passed in Cr. Misc. No. 67531 of 2019 (Sunil Kumar Dhawan vs. State of Bihar).

The petitioner having been made accused in the FIR being Shastri Nagar P.S. Case no. 733 of 2019 (G.R. no. 7543 of 2019) registered under sections 409 and 420 of the Indian Penal Code moved this Court for bail in Cr. Misc. No. 67531 of 2019. By order dated 17.12.2019 (Annexure-1) passed in Cr. Misc. no.



67531 of 2019, the petitioner was directed to be enlarged on provisional bail on his furnishing bail bond of Rs. 20,000/- with two sureties of the like amount each on the conditions mentioned in the said order, one of the conditions being that prior to release the petitioner shall surrender his passport before the learned court below and the same shall be kept by the learned court below in safe custody till conclusion of the trial. Subsequently by order dated 31.1.2020, the provisional bail granted to the petitioner was confirmed.

It is the case of the petitioner that pursuant to the order dated 17.12.2019, the petitioner obeyed all the conditions laid down therein. He surrendered his passport and also deposited a sum of Rs. 3.5 crores within four days of his release. He has fully cooperated with the investigating agency. It is submitted that the present FIR is in the nature of a case for recovery of money from the accused persons. The petitioner being a Director was not personally liable for the amount and the Company M/S ICN India Company Limited has not been made accused in the FIR. Nevertheless the recovery from the petitioner is complete and no purpose remains to be served so far as the petitioner is concerned.

It is further submitted that the petitioner is now aged



about 64 years and while granting provisional bail, the Court had taken note of the ill health of the petitioner. The two daughters of the petitioner are married and settled abroad. The petitioner needs to visit his daughters and also take some advance medical help with respect to stroke which he had suffered just a few days before his arrest. The petitioner undertakes that he shall abide by all the conditions which may be laid by this Court for his visit abroad and that he expects to return within four months.

Learned counsel for the petitioner further submits that a supplementary affidavit has been filed on behalf of the petitioner stating therein that the Court may consider accepting immovable property of the petitioner situated in Mahavir Enclave, New Delhi as a further surety and in lieu thereof the passport may be released to him to enable him to make the visit abroad to meet his daughters.

A counter affidavit has been filed on behalf of the Central Selection Board of Constable Recruitment ('the Board' in short). It is submitted by learned senior counsel appearing for the Board that an agreement was entered into between the Board and M/s ICN India Pvt. Ltd. for providing website, server resources, band etc. which was signed by Mr. Arun Kumar,



Manager who was authorized by the petitioner vide authorization letter dated 21.1.2018. The amount collected in the form of application fee was to be deposited by the Company with the Board within six days of the transaction. In spite of the agency collecting the amount pursuant to Advertisement no. 2/2018 and 1/2019 and in spite of the Board's letter to deposit the outstanding amount, only a sum of Rs.50,00,000/ was deposited. Thus, the FIR was lodged for defalcation of Rs. 14.06 crores (approx). The petitioner and Sri Arun Kumar were arrested on 18.9.2019. In a manner similar to that of the petitioner, co-accused Arun Kumar was also released on provisional bail on the assurance given by him that he will deposit the rest amount of Rs. 10.5 crores (approx) in three equal installments within a period of three months. The said Arun Kumar deposited Rs. 3.52 crores as the first installment and was released on provisional bail but he did not deposit the rest amount of Rs. 7.04 crores (approx).

It is submitted by learned senior counsel appearing for the Board that the petitioner who is the owner of the agency as also its Manager Arun Kumar are jointly responsible for defalcation of money. Arun Kumar not having obeyed the order of this Court, the amount of Rs. 7,04,39,674/ still remains



outstanding. It is further submitted that the petitioner wants to procure his passport so that he may run away to a foreign country disposing of his property. The petitioner is directly responsible for misappropriation of the government money. In such circumstances the prayer of the petitioner for release of his passport be rejected.

Having heard learned counsel for the parties and on going through the materials on record it transpires that it is true that while granting provisional bail to the petitioner vide order dated 17.12.2019, this Court had taken note of illness of the petitioner and his requirement to undergo specialized treatment at a proper place. The petitioner was released on provisional bail pursuant to the said order dated 17.12.2019 and his bail was confirmed vide order dated 31.1.2020 (Annexure-2). This Court can take judicial notice of the fact of spread of Covid 19 pandemic which has affected one and all including the functioning of the Courts as also travel since April, 2020.

So far as the petitioner travelling abroad to meet his daughters is concerned, the option of the daughters visiting their ailing father, the petitioner, is always available.

Thus taking into consideration the facts of the case, the main purpose behind the condition requiring the petitioner to



deposit his passport being to prevent him from leaving the country and ensuring his participation and cooperation in the criminal trial, in the opinion of the Court, the petitioner has not made out a case for modification of the order granting him bail and for return of his passport. There is no merit in the case of the petitioner.

The application stands dismissed.

(Partha Sarthy, J)

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