IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72563 of 2021

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

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PURNENDU KUMAR SON OF LADLI MOHAN CHAUBEY R/O - INDU MOHAN SMIRTI BUILDING, DIXON MORE, RBSS SAHAY ROAD, P.S.- KOTWALI, DISTRICT- BHAGALPUR-812001

... ... Petitioner/s

Versus

THE C.B.I. THROUGH THE SUPERINTENDENT OF POLICE, CBI/ACU-V/ACH/NEW DELHI

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Bindyachal Singh, Senior Advocate
		Mr. Prafulla Ranjan Tiwary, Advocate
For the CBI	:	Mrs. Nivedita Nirwikar, Senior Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL ORDER

4 19-07-2022 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 C.B.I. Case No. RC6(A)/18 wherein cognizance of the offences under Sections 120B, r/w 420, 465, 468, 471 and 477A of Indian Penal Code has been taken against the petitioner and others vide order dated 11.02.2021 and summons have been issued.

The accused/petitioner is named in the F.I.R. and is in custody since 13.08.2021.

The fact as set out in the F.I.R., alleges that the petitioner, who is a Charter Accountant and conducted audit of Shrijan Mahila Vikas Sahyog Samiti Ltd. (hereinafter referred to as 'SMVSSL'), intentionally omitted certain bank account, while doing audit of balance sheet of SMVSSL in collusion of other co-accused persons, due to which District Audit Officer, Co-operative Societies and Assistant Registrar of Co-operative Societies, Bhagalpur, did not come to know, in time to raise alarm to put a check on scam with further allegation to receive Rs. 15,00,000/- from the account of SMVSSL as gratification, without having any proper justification.

Learned senior counsel, Sri Bindyachal Singh, appearing on behalf of the petitioner submitted that petitioner was the Statutory Auditor of SMVSSL and his role in terms of Section 227 of Companies Act was limited, as to take only those accounts, which being placed before the Auditor. It has further been submitted that if the society had placed the entire documents without any omission, before the petitioner, there was no any occasion, to not consider the same in the audit. It has further been submitted that if office of Registrar co-operative societies would have supervise, in terms of mandate of statute and also in terms of report of Principal Accountant General (Audit), Bihar dated 20.09.2018, which talks about Revised Draft Audit Report on “Regularities in Financial Management involving SRIJAN”, perhaps the scheme would not take place. It has further been submitted that the petitioner can not hold vicariously liable for the act of omission and commission of Registrar Societies Co-operative as per established principle of criminal jurisprudence. It has further been submitted that allegation of receiving Rs. 15,00,000/- from the account of SMVSSL is with all justification as the same has been received by way of professional fees, by the petitioner being chartered accountant, which has duly shown in his personal Income Tax Return for the year 2015-2016 and 2016-2017.

Learned senior counsel has also emphasized that as per Bihar Cooperative Societies Act, 1935, as amended up to 2013, Section 33 sub-section 10 read with Rule 57 and 58 of Bihar cooperative Society Rules 1959 as amended up to date stated that the all the financial statements balance sheet, profit and loss, income and expenditure account shall be prepared by the Managing Committee of the society for placing before auditor for the audit and also to provide a copy of the same to the registrar. It has also submitted that as per sub-section 10 of Section 33, which says that books of records maintained by the society shall be produced before the auditor to verify the statement from the books and records maintained by the society. Legal provisions as aforesaid, clearly speaks that auditor has to only verify the books and accounts, whereas their related records to be maintained by the society.

It has further been submitted that nothing surfaced during course of investigation, which may suggest that petitioner willfully to defraud, alter, falsified or made false entry, suggesting his active involvement/participation in the alleged scam. It has been submitted that main 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. It has also been submitted that investigation has been completed, for which, charge-sheet has already been submitted in this case, as such, there is no chance of tampering with the 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 13.07.2022.

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 in collusion with other co-accused, but fairly conceded that number of accused persons have already been granted bail by this Court and also conceded that co-accused, namely, Sarita Jha, having more serious 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.

Considering the facts and circumstances as mentioned above, as petitioner was Statutory Auditor of the SMVSSL to conduct the audit as per documents supplied to him, who is a man of clean antecedent coupled with the fact that chargehseet 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 C.B.I. Case No. RC6(A)/18 on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Exclusive Magistrate-cum-Special C.B.I. Judge, 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.*
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> *(ii) That one of the bailors shall be Bikash Kumar Pandey, who is the cousin brother of the petitioner and deponent of the present bail petition."*

(Chandra Shekhar Jha, J)

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