IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11849 of 2022

Arising Out of PS. Case No.-15 Year-2017 Thana- C.B.I CASE District- Patna

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Bipin Kumar @ Bipin Kumar Sharma, aged about 54 years Gender- Male S/o Sri Kartik Kumar Resident of Hanuman Path Tilkamanjhi, near State Bank of India, P.S.- Tilkamanjhi, District- Bhagalpur.

... ... Petitioner/s

Versus

The Central Bureau of Investigation (C.B.I.), New Delhi

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Uday Pratap Singh, Adv.
For the CBI	:	Ms. Nivedita Nirvikar, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL ORDER

7 06-02-2023

Heard learned counsel for the petitioner and learned senior counsel representing the Central Bureau of Investigation *(for brevity 'CBI')*.

The petitioner seeks bail in connection with R.C. 15/A/2017, giving rise to Special Case No. 13/2020 arising out of Kotwali (Adampur) PS Case No. 508/2017 registered for the offence punishable under Sections 120B, 409, 420,467, 468 and 471 of the Indian Penal Code and Sections 13(2) r/w 13(1)(c) and 13(1) (d) of the Prevention of Corruption Act,1988.

The case arises out of a First Information Report *(for brevity 'FIR')* bearing Kotwali (Adampur), Bhagalpur PS Case No. 508 of 2017 registered on 11/08/2017 by the office of the *Zila Nazarat Shakha* at *Bhagalpur,* related to illegal transfer and misuse of funds from Government Bank accounts in Bhagalpur and Saharsa. The said case was re-registered by the *CBI* on transfer of the case vide Notification under Section 6 of the Delhi Special Police Establishment Act, 1946 *(for brevity 'DSPE Act, 1946)* issued by the Home Department Government of Bihar. The Government of India, in the Department of Personnel and Training, also issued notification dated 21/08/2017.

The brief substance of allegation in the FIR is embezzlement of funds by officials of Indian Bank from the current Account No. 6084978909 of the Bhagalpur Central Co-operative Bank Ltd, Bhagalpur Branch, maintained with the Indian Bank, Bhagalpur Branch, Bhagalpur to the accounts of 'Srijan Mahila Vikas Sahyog Samiti Limited *(for brevity 'SMVSSL').* The investigation was carried on for more than three (03) years.

Charge-sheet in the instant case has been submitted on 16-06-2020.

As per the charge-sheet, the petitioner's involvement has emerged in four other cases arising out of similar allegations, all of which together constitute, what is known in common parlance as "Srijan Scam". The petitioner has signed on several registration forms in the column of "Stamp Agent", for booking of flats in M/S gardenia India Limited, Noida, U.P. He has also purchased one flat in the name of his wife payment for booking of which was made by the prime accused of the scam. There is also alleged transfer of some funds from the account of *SMVSSL* to certain firms with which the petitioner is said to be associated in one way or the other; and also payment of some amount for making payment of the school fee for the petitioner's son.

Learned counsel for the petitioner submits that on surmises and conjectures the petitioner has been implicated merely because allegedly some transactions have emerged between the *SMVSSL* and the petitioner. He is neither government employee, nor an employee of the *SMVSSL*. Merely because he was having a Cash Credit account with the Banking unit of *SMVSSL*, and certain transactions arising from the said Bank, he has been implicated in six cases, including the instant case. He is on bail in RC 13A of 2017 and RC 7A of 2018. The material in the charge-sheet does not establish any role of the petitioner in the siphoning or misappropriation of the Government funds as alleged against *SMVSSL*. The alleged payment of *SMVSSL* are in fact, payments received by way of Cash Credit facilities from the Banking business of *SMVSSL*. The other alleged transactions are also either by taking loan or by using the Bank facilities of the Banking unit of *SMVSSL*. The petitioner is not named in the FIR. The material does not support any of the offences as alleged in the FIR. The petitioner, as per allegation, has deep roots in the society. Thus, it cannot be said that there is any chance of the petitioner abscondence or his tampering with any evidence, or influencing any witness. Several co-accused, namely, Subrato Das @ Subrata Das, Pradyut Kumar Biswas @ P.K. Biswas @ Vishwas, Hari Shankar Upadhyaya @ Hari Shankar, Praveen Kumar, Ajay Kumar Pandey, Ram Krishna Jha @ R.K. Jha, Banshidhar Jha @ Vanshidhar Jha @ Vanshidhar and Atul Raman have been allowed bail vide Cr. Misc. Nos. 25415 of 2019, 85419 of 2019, 40816 of 2019, 20983 of 2020, 26335 of 2020, 10871 of 2021, 10237 of 2021 and 5519 of 2021 respectively. The petitioner's case is on a better footing then these co- accused persons.

The petitioner is in custody since 27/09/2021 in connection with other cases arising out of the same Scam, and remanded in this case on 22/11/2021.

Learned Senior counsel for the CBI would submit that the various transactions which have emerged in the investigation show transfer of funds from *SMVSSL* to the petitioner for various purposes. Thus, it is a clear indication of the petitioner's involvement in the offences arising out of the FIR. The petitioner has benefited from the *SMVSSL,* which organization was a beneficiary of the misappropriated Government funds. Material therefore, is sufficient to support the allegations against the petitioner.

In the counter-affidavit, the Investigating Agency has averred that if petitioner is enlarged on bail, he may influence the witnesses of the case or he may evade the trial proceedings.

On hearing the learned counsels, this Court would take into consideration the nature of accusations and material collected in the investigation, as noted above, including the assertion on behalf of the petitioner that he maintained Cash Credit account with the Banking unit of *SMVSSL,* petitioner also is neither a Government Servant, nor an employee of *SMVSSL*. The Court would also consider his plea regarding the transactions being in due course of Banking business as a customer of banking unit of *SMVSSL*, for the limited purposes of grant of bail.

Insofar as the averment in the counter affidavit that petitioner may influence the witnesses, this Court would find that assertion is not supported by any material particulars as to which of the witness, he has tried to influence, and in what manner. There is nothing more than a generalized apprehension expressed in the counter affidavit without any material basis. The same, therefore, cannot be a reason to conclude such propensity of the petitioner to deny regular bail.

The learned senior counsel for the Investigating Agency (CBI) has not denied the assertion regarding petitioner's cooperation in the investigation leading to submission of the charge sheet, the factum of several co-accused having been allowed bail, as as noted above, is also not denied or disputed.

The Court, therefore, is inclined to accept the submissions advanced by the learned counsel for the petitioner, as noted above, so as to allow him bail. The consideration is for the limited purposes of grant of bail and may not be deemed as an expression of any opinion by this Court on the merits of the matter which is yet to be determined at the trial or for any other purposes.

Petitioner's prayer for bail is allowed.

Let the petitioner, above named, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of the learned Special

Judge, CBI- II, Patna, in connection with Special Case No. 13 of 2020 cum- R. C. 15/A/2017 arising out of Kotwali (Adampur) PS Case No. 508 of 2017, subject to the following conditions:-

(i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as to how he is related with the petitioner. The bailor will also undertake to inform the Court if there is any change in the address of the petitioner.

(ii)That the petitioner will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

(iii) The petitioner shall not leave the country without permission of the Trial Court.

This Court would expect that the petitioner's counsel would honour his undertaking in the instant proceedings regarding supply of the requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

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