IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14294 of 2022

Arising Out of PS. Case No.-13 Year-2017 Thana- C.B.I CASE District- Patna

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BIRENDRA KUMAR MISHRA SON OF SHRI JAICHANDRA MISHRA Resident of Village - and Post - Kothia, P.S.- Bhairav Asthan, Distt.- Madhubani (Bihar).

... ... Petitioner/s

Versus

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

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Manish Kumar No. 2, Adv.
For the Opposite Party/s : Ms. Nivedita Nirvikar, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV JUDGMENT

Date : 24-02-2023

I have already heard the learned counsel for the petitioner as well as Ms. Nivedita Nirvikar, the learned Senior counsel for the Central Bureau of Investigation (CBI).

The petitioner apprehends his arrest in connection with Special Case No. 02 of 2021, arising out of R.C. Case No.13/A/2017, arisen from Bhagalpur Kotwali P.S. Case No.500 of 2017, registered for the offences punishable under Sections 409, 420, 467, 468, 471 and 120B of the Indian Penal Code and the charge-sheet has been submitted under Sections 409, 420, 467, 468, 471, 477A and 120B of the Indian Penal Code and Section 13(2) r/w 13 (1) (d) of the Prevention of Corruption Act.

This matter relates to infamous Srijan scam. A huge public money, i.e., crores of rupees were illegally transferred into bank account of *Srijan Mahila Vikash Sahyog Samiti Limited* (hereinafter referred to as SMVSSL), which is a non-governmental organization. A number of public servants were alleged to be involved in that scam.

Brief fact of this case is one of the cases in Srijan Scam and was registered by CBI, AC-II, New Delhi on 25.08.2017, by taking over investigation of FIR No. 500/2017 dated 08.08.2017 of Kotwali Thana (Tilkamanjhi), Bhagalpur, registered under Sections 409, 420, 467, 468, 471, 120B and 34 of the Indian Penal Code, in compliance to the notification no. 8/CBI-80-05/2017HP-6715 under Section 6 of DSPE Act, issued by the Home Department, Government of Bihar, Patna and notification no. 228/41/2017-AVD-II dated 21.08.2017, under Section 5(1) r/w Section 6 of DSPE Act, issued by the Department of Personnel & Training, Government of Indian, New Delhi. It is alleged that during the period 2014-2015, the proceeds of cheques worth Rs.2,70,03,32,693/- issued by DLAO, Bhagalpur for crediting the same in A/c No. 10010100014403, maintained in the name of DLAO, Bhagalpur, was either not credited in the said account of DLAO, Bhagalpur or was fraudulently diverted in the account of SMVSSL, Bhagalpur. Further alleged that during the period 2014-15, an amount of Rs. 15,29,17,881/- was fraudulently siphoned off from A/c No. 10010200000114 and an amount of Rs. 101555043.30 was fraudulently siphoned off during the year 2016-17, from A/c Nos. 10010100016113, 10010100016114 and 10010100016162 maintained in the name of DLAO, Bhagalpur with Bank of Baroda, Bhagalpur. It is further alleged that during the period 2007-2017, the proceeds of cheques worth Rs.76,44,35,083.80 issued/received by DLAO, Bhagalpur for crediting the same in account nos. 6477544592, 6459455501, 730435850 and 6437511585 of DLAO, Bhagalpur maintained with Indian Bank, Bhagalpur, was either not credited in these accounts or was fraudulently siphoned off from these accounts during the said period.

The learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. He has not made any transaction in the account of SMVSSL. He joined as District Land Acquisition Officer, Bhagalpur in the month of July, 2007 and he was transferred therefrom in the first week of December, 2008. During his one year of service at Bhagalpur, he never transferred any amount in the account of above-mentioned NGO. He has submitted further that in the year 2008, the petitioner sent a letter to the Secretary of SMVSSL, Bhagalpur to close the bank account in his Society and deposit the entire amount in the government account. The petitioner kept writing letters to the said NGO, informing the Controlling Officer for closing the account. He was not charge-sheeted in the main charge-sheet, but in the supplementary charge-sheet submitted by the CBI, he was made accused for transferring the amount in favour of the said NGO. He has also submitted that this allegation is also false that he is beneficiary of the alleged transfer of amount of Rs. 1.5 crore mentioned in the supplementary charge-sheet,but it was not deposited in the account of the said NGO, rather it was deposited in the account of District Land Acquisition Officer (hereinafter referred to as DLAO). He has also submitted that, though the petitioner admits that a flat was booked in Gayatri Homes, Bhagalpur in the name of his wife, Mrs. Rita Mishra, but it is not true that the consideration money of the flat was paid from the money earned by him through illegal sources. As a matter of fact, he issued cheques in lieu of consideration money from his salary account and some cash were also given by him. He has also submitted that the sale deed of that flat has not been executed up-till-now, as such, it is not true to say that he is a purchaser of that flat. He has also submitted that some accused persons have been granted anticipatory bail.

On the other hand, Ms. Nivedita Nirvirkar, the learned Senior counsel for CBI has opposed the prayer for anticipatory bail and submitted that there are eight bank accounts in the name of DLAO, Bhagalpur. The petitioner actively participated in misappropriation of funds from the account of DLAO, Bhagalpur to the account of SMVSSL in criminal conspiracy with the officials of Bank of India, Indian Bank, SMVSSL and other accused persons. She has submitted further that the petitioner took charge from Smt. Jayshree Thakur, DLAO, Bhagalpur and he transferred Rs. 1 crore, vide Cheque No.566349 dated 09.02.2008 from Account No. 730435850 in Indian Bank, Bhagalpur to the account No. 37 in the name of SMVSSL without any public interest, just to make available government funds for the use of Smt. Manorma Devi, Secretary of SMVSSL. However, previous DLAO, Sri Shiv Nath Kunwar had transferred all the amounts lying in Account No. 37 in SMVSSL to Nationalized Bank, as SMVSSL was not a government bank. The petitioner, Birendra Kumar Mishra had booked a flat in Gayatri Homes, Bhagalpur in the name of his wife, Smt. Rita Mishra and made payment in cash while he was posted as DLAO, Bhagalpur.

It emerged during the investigation that Birendra Kumar Mishra, the petitioner, was posted as DLAO, Bhagalpur from 07.08.2007 to 12.12.2008 and he actively participated in misappropriation of government funds. He illegally transferred Rs. 1 Crore, vide Cheque No. 566349 dated 09.02.2008 from the Account No. 730435850, Indian Bank, Bhagalpur to the Account No. 37 in the name of SMVSSL, without any public interest. It has also been revealed during the investigation that he had booked a flat no. 404 at his place of posting, i.e. Bhagalpur, in the name of his wife, Smt. Rita Mishra, and most of the consideration money was paid in cash while he was posted there.

In my view, it is not a fit case for anticipatory bail. Accordingly, it is rejected.

(Nawneet Kumar Pandey, J)

Mahesh/Nirmal

AFR/NAFR	NAFR
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