IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32150 of 2022

Arising Out of PS. Case No.-9 Year-2018 Thana- C.B.I CASE District- Patna

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Bijoy Kumar Sharma @ Bijay Kumar Sharma, S/o Sukhdeo Prasad Sharma R/o village- Bahawalpur, P.S.- Madhusudanpur, District- Bhagalpur

... ... Petitioner.

Versus

The Central Bureau of Investigation through its Director.

... ... Opposite Party.

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Appearance :

For the Petitioner	:	Mr. Y.C. Verma, Senior Advocate Mr. Priyanka Singh, Advocate
For the Opposite Party	:	Mrs. Nivedita Nirvikar, Senior Advocate Mr. Arya Achint, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
C.A.V. ORDER

6 29-03-2023 Heard Mr. Y. C. Verma, learned senior counsel assisted by Mrs. Priyanka Singh for the petitioner and Mr. Nivedita Nirvikar, learned senior counsel assisted by Mr. Arya Achint, learned Advocate for the Central Bureau of Investigation.

The petitioner apprehends his arrest in connection with Special Case No. 02/2019 arising out of the RC.9/A/2018 under Sections 120B, 409, 420, 467, 468 and 471 of the Indian Penal Code and Sections 13 (2)/13(1) (c) (d) of the Prevention of Corruption Act.

The case arises out of a criminal conspiracy known in the common parlance as ***Srijjan Scam*** where in the government funds have been misappropriated through banking transactions by siphoning off the funds in the accounts Srijan Mahila Vikas

Sahyog Samiti Ltd. (hereinafter referred to as the SMVSSL).

The prosecution case as per the FIR relates to illegal transfer and misuse of funds from government Banks Accounts in Banka and Bhagalpur in fraudulent and conspiratorial manner. The allegation, in brief, are that A/c No. CA/99 in the name of District Land Acquisition Officer (DLAO), Banka Branch opened in the year 2002 in the Banka branch of the Bhagalpur Central Cooperative Bank Ltd. (BCCBL) and amount of Rs. 2.00 crore vide cheque no. 91801 dated 14-04-2009, Rs. 2 .00 Crore vide cheque no. 91802 dated 10-06-2009 and Rs. 1.5 Crore vide vide cheque no. 91805 dated 14-08-2009 were fraudulently withdrawn from this account by Smt. Jayshree Thakur, the then District Land Acquisition Officer (DLAO). The cheque no. 91805 dt. 14-08-2019 amount of Rs. 1.50 Crore was issued by Smt. Jayshree Thakur from A/c no. CA/99 in the favour of District Land Acquisition Officer in her own handwriting without mentioning the A/c no. in which the proceeds of the cheque is to be transferred. Thus, the allegation against the petitioner is that under a conspiracy he deliberately ignored the basic difference in the payees names mentioned in the BCCBL cheque no. 91805 and by abusing his official position issued S.C. no. 46 and ultimately after passing through table off different officials, the said amount of 1.5 Crore was diverted from the account no. CA/99 to the A/c no. 625 of the SMVSSL on 17-08-2009.

Learned senior counsel for the petitioner submits that petitioner is quite innocent and has been falsely implicated in this case at the instance of CBI officials and petitioner has been made a scapegoat in order to save real culprits. He further submits that petitioner is not named in the FIR and his name transpires during the course of Investigation. He further submits that the case was registered on 20-08-2017 and it was re-registered by CBI in the year 2018 and the investigation went for two years and, ultimately, the charge-sheet was submitted on 25-07-2019. He submits that petitioner was posted at the Bhagalpur Central Cooperative Bank Limited Bhagalpur and he was transferred there at the verge of his retirement in the year 2009 as he retired in the year 2011.

Learned senior counsel further submits that as the allegation is concerned, the petitioner has neither issued SC No. 46 nor he is concerned with the issuance of S.C. no. 46 and he has not put his signature upon the relevant documents. He also submits that neither the petitioner issued S.C. no. 46 nor the cheque passed to the table of the petitioner. He further submits that there is no recovery of amount either from personal capacity nor from Bank account of the petitioner. He further submits that during entire service carrier there is no such allegation against the petitioner of abusing his official position. The petitioner is old age person and suffering from various old age ailments. He also submits that during investigation the CBI took his admitted handwriting/signatures for the purpose of comparison with the signature put upon the document which ultimately did not tally and the petitioner was called for many times but the petitioner was not arrested at any point of time and petitioner rather fully cooperated with investigation and he has never abused of temping with evidence.

Learned Senior Counsel relies upon a judgment in the case of Sanjay Chandra vs. CBI in which in para-28 the Hon'ble Apex Court has been pleased to held as under:

> "We are conscious of the fact that the accused are charged with economic offences of huge magnitude. We are also conscious of the fact that the offences alleged, if proved, may jeopardize the economy of the country. At the time, we cannot lose sight of the fact that the

investigating agency has already completed investigation and the charge sheet is already filed before the Special Judge, CBI, New Delhi. Therefore, their presence in the custody may not be necessary for further investigation. We are of the view that the appellants are entitled to the grant of bail conditions pending in trial order on stringent ally the same to apprehension expressed by CBI."

Hon'ble Apex Court in the case Aman Preet Singh versus CBI through its Director has held as under:

"The fact that the accused arrested during the investigation and not being produced in custody before the charge sheet was filed is sufficient to entitle such person to be released on bail, the top court said.

The rationale has been succinctly set out that if a person has been enlarged and free for many years and has not even been arrested during investigation, direct his arrest and to suddenly to be incarcerated merely because charge sheet has been filed would be contrary to the governing principles for grant of bail. We could not agree more with this."

He also relies upon a recent judgment dated 20.03.2023 of the Hon'ble Apex Court passed in the case of Mahdoom Bava Vs. Central Bureau of Investigation {Special Leave to Appeal (Crl.) No (s).376/2023} and analogous cases and, more particularly, in paragraph-10 thereof, which is being reproduced herein below:

> "10. More importantly, the appellants apprehend arrest, not at the behest of the CBI but at the behest of the Trial Court. This is for the reason that in some parts of the country, there seems to be a practice followed by Courts to remand the accused to custody, the moment they appear in response to the summoning order. The correctness of such a practice has to be tested in an appropriate case. Suffice for the present to note that it is not the CBI which is seeking their custody, but the appellants apprehend that they may be remanded to custody by the Trial Court and this is why they seek protection. We must keep this in mind while deciding the fate of these appeals."

On the other hand, learned senior counsel for the CBI vehemently opposing the prayer for bail submitted that this case is related to infamous Srijjan Scam in which illegal transfer has been made by misusing the government funds in conspiratorial manner. She submits that the petitioner is charge-sheeted in the oral and documentary evidence and it was well established during investigation that he was very much in knowledge of the fraud and diversion of Government funds into the accounts of SMVSSL and actively indulged in the criminal conspiracy resulting this scam. She further submits that investigation has established that petitioner has verified fraudulent transaction related to cheque no. 91805 of Rs. 1.50 Crore in the bank account no. 625 of SMVSSL, ignoring the basic difference between payees name in deposit slip and concerned cheque and signed below the stamp of BCCBL, Bhagalpur and issued S.C. no. 46 of Manager BCCBL, Banka and petitioner was in full knowledge this cheque will be credited into the account of SMVSSL. She further submits that investigation has revealed that petitioner was well aware of modes-operandi of Srijjan Scam that the funds of DLAO, Banka account fraudulently diverted to the SMVSSL accounts and to avoid dishonour of cheques issued from office of DLAO, SSVSSL used to transfer back some of the funds into the account of DLAO, Banka. In buttress of her submission, she relies upon the judgment in the case of Nimmagadda Prasad vs. Central Bureau of Investigation reported in (2013) 7 SCC 466, in which the Hon'ble Supreme Court has held thus:

> "Economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offence having deep-rooted conspiracies and involving huge loss of public funds needs to be viewed seriously and considered as a grave offence affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country."

She further relies upon the judgment in the case of Shivani Rajiv Saxena V. Directorate of Enforcement and others, in which Hon'ble Court has observed as follows in Para 13:

> "The offence alleged against the petitioner falls under the category of economic offences which stand in a graver footing. These crimes are professionally committed by white-collared people which inflict severe injuries on both health and wealth of

> the nation. Such offences need to be dealt with a heavy hand and releasing such accused on bail will affect the community at large and also jeopardize the economy of the country."

She lastly submits that petitioner has played a major role in the conspiracy of fraudulent diversion and criminal misappropriation of crores of rupees of Government funds and there are sufficient evidences oral as well as documentary against him, hence the petitioner does not deserve anticipatory bail.

Having considered the rival submissions made by the the parties, for the reasons as enumerated in the foregoing paragraphs and relying upon the recent judgment of the Hon'ble Apext Court in the case of Mahdoom Bava (supra), I am inclined to grant privilege of bail to the petitioner.

The petitioner above named is directed to be released on bail, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned Court below where the case is pending/successor Court in connection with Special Case No. 02 of 2019, arising out of R.C. 9/A/2018, subject to the condition as laid down under Section 438 (2) of the Cr.P.C., as also the following conditions:-

(i) Petitioner shall co-operate into trial and shall be properly represented on each and every date fixed by the trial court and shall remain physically present as directed by the trial court and on his/her absence on two consecutive dates without sufficient reason, his/her bail bond shall be cancelled by the trial court.

(ii) If the petitioner is found tampering with the evidence or the witnesses in this case, the prosecution will be at liberty to move for cancellation of bail.

(iii) The petitioner shall surrender his Indian Passport before the trial court, if he is in possession of the same and without the permission of the trial court, he will not leave the State.

(Anjani Kumar Sharan, J)

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