IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34032 of 2022

Arising Out of PS. Case No.-17 Year-2017 Thana- C.B.I CASE District- Patna

==

SATISH KUMAR JHA Son of Late Kameshwar Jha Resident of Village - Flat No.101, Block - A, Aungbihar, Appartment, Rani Talab Sabaur Road, Bhagalpur, P.O.- Fatehpur, P.s.- Zeromile, Bhagalpur, Distt.- Bhagalpur.

... ... Petitioner/s

Versus

The Central Beauro of Investigation (CBI) ACB, Patna. Bihar

... ... Opposite Party/s

==

Appearance :

For the Petitioner/s : Mr.S.D.Sanjay, Sr. Adv.
Mr.Shashank Shekhar Jha, Adv.

For the Opposite Party/s : Mrs.Nivedita Nirvikar, Sr. Adv.

==

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

CAV ORDER

8 29-03-2023 Heard Mr. S.D. Sanjay, learned Senior Counsel for the petitioner assisted by Mr. Shashank Shekhar Jha, Advocate and learned Mrs. Nivedita Nirvikar, Senior Counsel for the C.B.I.

The petitioner apprehends his arrest in a case registered for the offence punishable u/s 120B, 34, 409, 419, 420, 467, 468 and 417 IPC and 13(2) r/w section 13(i)(d) of the Prevention of Corruption (P.C.) Act, 1988.

This case arises from infamous Srijan Scam. The petitioner in connivance with office bearers of Srijan Mahila Vikas Sahyog Samiti Limited (hereinafter for the sake of brevity referred to as 'SMVSSL') and others is said to have fraudulently misappropriated the fund of Mukhyamantri Gramodyay Yojna, 13th Finance Commission, 4th State Finance Commission, BRGF (General) 5th Finance Commission remitted through Govt. Account payee cheque issued in favour of the concerned authority by deliberately and dishonestly depositing and crediting the cheque in the Bank Account of Srijan. Hence, in collusion of Bank of Baroda, Bhagalpur & Indian Bank, Bhagalpur with Srijan (SMVSSL) have cheated the Govt. administration of such basis.

It is submitted by learned Senior Counsel for the petitioner that petitioner is not named in the F.I.R. and has been falsely implicated in this case. Petitioner has got six criminal antecedent as stated in para-3 of the bail application. It is submitted that no specific allegation has been found against the petitioner. He is not said to be a beneficiary in the entire happenings as during the course of investigation, not a single penny has been seized/recovered from the account of the petitioner or from any other source. There is no specific involvement of the petitioner in defalcation of public fund. The only allegation mentioned in the charge sheet is that the said ‘pay in slip’ or ‘depositing slip’ has been written by the petitioner but neither signature over the pay in slip nor any proof could be find out by the prosecution during investigation.

It is further submitted that the flats in question were purchased by the children of the petitioner, who are major, working and self dependent. Petitioner was also rendering his service on good post and was in a position to purchase flats. It is submitted that petitioner is retired and suffering from many diseases. During investigation, the petitioner has co-operated and he was not arrested during the investigation, therefore, no custodial interrogation is required in the present case. This case is based on the documentary evidence and all the document was seized by the C.B.I. and there is no allegation against the petitioner to tamper the witness. It is lastly submitted that some of the co-accused in connection with the Srijan Scam Case have been granted anticipatory bail by co-ordinate Bench of this Court.

Learned Senior Counsel for the C.B.I. opposed the bail application and submits that the petitioner is one of the main conspirators of Srijan Scam cases. He was very close to late Manorma Devi and played a vital role in the diversion of funds from the accounts of DDC cum CEO to the account of SMVSSL. The investigation further revealed that he in conspiracy with late Smt. Manorma Devi and others fraudulently filled the BoB pay-in-slips dated 18.04.2009 & 22.10.2010 for the amount of Rs.2 crores each, for crediting proceeds of cheque Nos.52905 & 47414 in the account of SMVSSL at BOB, Bhagalpur, having forged signature of the then DDC cum CEO, Zila Parishad, Bhagalpur. He has received illegal pecuniary advantage from SMVSSL for his illegal acts in fraudulent diversion of funds from the accounts of DDC cum CEO, Zila Parishad, Bhagalpur, to the account of SMVSSL. Learned Senior Counsel for the C.B.I. further submits that the petitioner has filled up the pay in slip and the same was sent to the C.F.S.L., whereby it was found that the said entry is written by the petitioner and the co-accused and seal recovered from SMVSSL was used in the forgery of cheques for illegal transfer of funds from the account of DDC cum CEO, Zila Parishad, Bhagalpur to the accounts of SMVSSL. It is further submitted that the petitioner was making benefit from the account of the Srijan Mahila Vikas Sahyog Samiti Limited, as some money, amounting in lakhs has been spent for the flats booked by the son and daughter of the petitioner, which shows that petitioner was also directly getting benefit from the SMVSSL. The flat at Vasundhara, Ghaziabad was booked in the joint names of his both sons namely Shri. Himanshu Shekhar Jha and Shri Subhranshu Shekhar for an amount of Rs.25 lacs, out of which payments of Rs.8 Lacs on 10.02.2012, Rs.2 Lacs on 3.12.2012 and Rs.2.5 Lacs on 17.04.2014 were made from the account of SMVSSL. Purchase of flat in Pune by son-in-law of the petitioner, transfer of Rs.11,00,000/- into ICICI Account of Shefali Arora, Rs.6,00,000/-, Rs.5,00,000/- were made from the accounts of SMVSSL.

Heard the arguments of both parties and perused the records, including the case diary. Earlier two anticipatory bail applications of the petitioner was also rejected by this Court in connection with Special Case No.11/2020, arising out of R.C. No.6(A)/2018 and Special Case No.01/2020, arising out of R.C. No.15/S/2018, both, relating to the Srijan Scam but in the judgment of the Apex Court in the case of ***Mahdoom Bava vs. Central Bureau of Investigation*** arising out of ***SLP (Crl.) No.376 of 2023***, it is categorically mentioned at para-10, that the appellants apprehend arrest, not at the behest of the C.B.I. but at the behest of the Trial Court. Para-9 and 10 of the said judgment reads as follows:-

> "9. *On the strength of the aforesaid allegations, which are certainly serious in nature, the prayer of the appellants for anticipatory bail is opposed vehemently by the learned Additional Solicitor General. But in our considered view there are at least three factors which tilt the balance in favour of the appellants herein. They are:-*
>
> *(i) Admittedly, the CBI did not require the custodial interrogation of the appellants during the period of*

investigation from 29.06.2019 (date of filing of FIR) till 31.12.2021 (date of filing of the final report). Therefore, it is difficult to accept the contention that at this stage the custody of the appellants may be required;

(ii) In the reply/counter filed before the High Court, the CBI had taken a categorical stand that the Court had merely issued summons and not warrant for the appearance of the accused. In the case of Shri Deepak Gupta, CBI had taken a stand before the Special Court that "the presence of the accused is not required for the investigation but it is certainly required for trial" and that therefore he needs to be present. Therefore, all that the CBI wanted was the presence of the accused before the Trial Court to face trial. In such circumstances, to oppose the anticipatory bail request at this stage may not be proper; and

(iii) All transactions out of which the complaint had arisen, seem to have taken place during the period 2009-2010 to 2012-2013 and all are borne out by records. When the primary focus is on documentary evidence, we fail to understand as to why the appellants should now be arrested.

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."

Considering the Apex Court order, in the case of ***Satender Kumar Antil vs. Central Bureau of Investigation (C.B.I.) & Anr.*** and para 9 & 10 of the case of ***Mahdoom Bava (supra)***, I am inclined to enlarge the petitioner on anticipatory bail.

Accordingly, the above named petitioner, 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.14/2020, RC No-17/A/2017, subject to the conditions 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)

pallavi/-

U		T	