IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35728 of 2022

Arising Out of PS. Case No.-21 Year-2019 Thana- KURTHA District- Jehanabad

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Vivek Kumar Sinha Son Of Late Prabhu Kumar Sinha Resident Of Mohalla - Court Area, Near L.I.C. Office, Jehanabad, Police Station - Jehanabad, District – Jehanabad.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Principal Commissioner, Income Tax, Patna. Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjeet Kumar, Advocate
For the Informant/s	:	Mr. Nishikant, Advocate
		Mr. Madhumay Madhup, Advocate
For the State	:	Mr. Satyendra Narayan Singh, APP
For Income Tax Department:		Ms. Archana Sinha @ Archana Shahi, Advocate

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH

ORAL ORDER

6 20-02-2023 Let the defects, if any, pointed out by the office be removed within three weeks from the date of this order, failing which the matter be listed again under the appropriate heading for necessary action.

Heard learned counsel for the petitioner, learned counsel for the informant, learned counsel for Income Tax Department and learned APP for the State.

Petitioner seeks regular bail in connection with Kurtha P.S. Case No. 21 of 2019 registered for the offences punishable under Sections 406,420,465,467,468 and 471 of the Indian Penal Code and the said case is pending before the Court of learned S.D.J.M., Arwal.

Allegedly, the petitioner who was bound to file the income tax return as per the agreement on behalf of the college concerned, dishonestly misappropriated a sum of Rs. 2,35,24,629/- by not depositing the said amount which was concerned to the income tax returns of the employees of the college concerned to the Income Tax Department and also forged E-Challans which were submitted by him to the college showing the deposition of the income tax returns of the college employees.

The main submissions advanced by learned Senior counsel Mr. Sanjeet Kumar, appearing for the petitioner are that the petitioner is a tax consultant working in the district of Jehanabad and his father was a renowned Tax Consultant/Famous Advocate and at the relevant time of depositing the income tax returns concerned to the employees of the college concerned, a close family member of the petitioner became seriously ill owing to which some delay took place on the part of the petitioner in depositing the alleged amount of income tax returns and when he returned to his working place then he immediately deposited the amount of Rs.2,35,24,629/- and amount of fifty lac rupees had already been deposited earlier by him on 04.01.2019 through a tax challan and accordingly, all the alleged misappropriated amount has been deposited by him and in this regard he has filed his additional supplementary affidavit showing the total amount being Rs.2,83,19,629/- having been deposited by him against the alleged amount of misappropriation. Further submission is that the petitioner has also deposited Rs. 13,22,130/- which is said to be interest having accrued on the alleged misappropriated amount and the concerned college has also issued no dues certificate in favour of the petitioner which is clearly evident from the no dues certificate filed as Annexure-8 and in the present time there is no any type of dues on the part of the petitioner. Further submission is that there are criminal antecedent of two cases against the petitioner in which one is Jehanabad P.S. Case No. 194 of 2019 lodged under Section 406 of IPC and other case has been lodged by Shri Satyendra Kumar, posted as Librarian in Darhetta-Lari (Arwal) College bearing Shakurabad P.S. Case No. 50 of 2019 and both the said cases were lodged by the petitioner's clients and in the Shakurabad P.S. Case No. 50 of 2019 police submitted final form as mistake of fact in favour of the petitioner and the said final form has been accepted by the magistrate concerned.

On the contrary, learned counsel Mr. Nishikant, appearing for the informant has vehemently opposed the prayer for bail of the petitioner and submitted that the petitioner intentionally suppressed the details of his criminal antecedents and at the initial stage he revealed the details of only one case being as his antecedent and on account of the alleged act of defalcation of huge amount of income tax returns of the employees of the college concerned, serious penal provisions under Income Tax Act have attracted and all the said employees and officers of the college have suffered a lot and also facing proceedings initiated against them by Income Tax Department on account of not depositing their income tax returns within the prescribed time period for which the petitioner is alone responsible. Further submission perhaps the petitioner is not a legal practitioner and in this regard a required information under R.T.I. Act is being gathered from the concerned department and he has cheated several government employees as well as others by misusing his position and misappropriating the money which was entrusted to him by the sufferes, and therefore he is not entitled to the privilege of bail.

Learned APP Mr. Satyendra Narayan Singh, appearing for the State as well as learned counsel Ms. Archana Sinha @ Archana Shahi, appearing for Income Tax Department has opposed the prayer for bail of the petitioner.

Heard both the sides and perused the FIR and the case diary of this case. Though against the petitioner there is a serious allegation of defalcation of the huge amount of money which was entrusted to him for the purpose of depositing the income tax returns of the employees and officers of the college concerned but in the present time it is admitted position that the petitioner has deposited all the alleged defalcated amount and he has been languishing in jail since 24.05.2022 and prosecution's case is mainly based on documentary evidence so there is no chance of tampering with the evidence by the petitioner and against him the investigation has been completed. So, in the light of these facts, keeping the petitioner behind the bars during the pendency of his trial will not serve any purpose, hence I am inclined to accept his prayer for bail. Accordingly, let the petitioner named-above be enlarged 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 concerned Court in connection with Kurtha P.S. Case No. 21 of 2019.

(Shailendra Singh, J.)

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