IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.46987 of 2021

Arising Out of PS. Case No.-29 Year-2021 Thana- SULTANGANJ District- Bhagalpur

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Roushan Kumar Mishra S/o Vivekanand Mishra R/o Village-Chhatrahar, P.S-Shambhuganj, District-Banka.

... ... Petitioner/s

Versus

THE STATE OF BIHAR

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Singh, Sr. Advocate
		Mr. Ranjan Kumar Jha, Advocate
		Mr. Rana Pratap Singh, Advocate
For the Opposite Party/s	:	Mr. Pramod Kumar Pandey, APP
For the Informant	:	Mr. Rajendra Narayan, Sr. Advocate
		Mr. Abhishek Kumar Pandey, Advocate
		Mr. Sachin Kumar, Advocate
		Mr. Kuldeep Thakur, Advocate
		Mr. Pankaj Kumar Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

11 16-08-2023 1. Heard learned Senior counsel for the petitioner, learned Senior counsel for the informant and learned A.P.P. for the State.

2. The petitioner apprehends his arrest in connection with Sultanganj P.S. Case No. 29 of 2021 registered for the offences punishable under Sections 406, 420, 467 and 468 of the Indian Penal Code.

3. Learned Senior counsel for the petitioner submits that the petitioner is a person with clean antecedent and the informant alleges that he is working as a Senior Field Coordinator in Intigra Micro Systems Private Limited, a

registered Company which carries business of financial transactions/loans, further alleges that the Company, in terms of the guidelines of the RBI, entered into an agreement with Ujjivan Small Finance Bank and one Raushan Kumar Mishra was appointed as Business Correspondent (Mani Mitra) by the Company, so that the financial transactions of the bank along with the beneficial schemes of the bank is taken to citizens. Accordingly, a current account of Raushan was opened in the bank for carrying out the schemes, further one current account of the Company was also opened with the bank in Bengaluru so that Raushan, as Money Mitra, can perform financial transactions, it is next alleged that the petitioner from the date of his appointment till 13.01.2021 deposited an amount of Rs. 3,30,92,590/- in the account of the Company from his current account. It is further alleged that petitioner from his date of appointment till 13.01.2021 received an amount of Rs. 3,03,00,511/- from the Loan Recovery Officer of the bank in cash, thereafter till 13.01.2021 received Rs. 26,26,569/- in cash from the customers of the bank towards cash deposit. It is further alleged that till 13.01.2021, the petitioner gave Rs. 8,43,072/- to the customers of the bank through withdrawal, as such it is alleged that in view of the aforesaid, the petitioner was entitled to receive only an amount of Rs. 10,08,582/- in his current account from the account of the Company but the petitioner by manipulating the electronic device, got a sum of Rs. 1,12,59,837/- transferred in his account and thus misappropriated and embezzled public money.

4. Learned Senior counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in the present case, it is next submitted that though it is alleged that petitioner by manipulating electronic device got an amount of Rs. 1,12,59,837/- credited in his account and thus misappropriated the said amount, but then the FIR does not disclose what was the manipulation in the electronic device leading to misappropriation, it is further submitted that the FIR has not been instituted under the IT Act so that the case could have been investigated by the Cyber Wing of the Police, it is also submitted that the Company has not handed over any evidence of tampering with the electronic device by the petitioner to the police at the time of instituting the FIR. The learned Senior counsel further submitted that petitioner is a simple graduate and thus was not in a position to understand the complexities of the electronic device leading to its manipulation, when as per RBI guidelines, all transactions have

to commence online, there is no provision of overdrafting, further the RBI guidelines mandates that the controlling power of the device shall be in hands of senior officials. The learned Senior counsel next submits that this perhaps explains why the FIR was not instituted under the IT Act so that the investigation is not carried by an expert agency, as the Police does not have the wherewithal of investigating cases related to fraud committed by manipulating electronic devices, it is next submitted that in the FIR, date of petitioner's appointment is not mentioned, which amply demonstrates that the FIR was instituted in haste with omnibus allegation.

5. The learned Senior counsel for the petitioner further submits that neither the bank nor the customers have raised any complaint against the petitioner, it is next submitted that though allegation is of misappropriation but then the money has not been misappropriated by the petitioner, it is also submitted that if what has been alleged in the FIR been true, in that event some responsible officers of the Company would have instituted the FIR but the present FIR has been instituted by a person who is only one level above the petitioner and he also does not have any understanding of manipulation of electronic devices. The learned Senior counsel further submits

that it absolutely does not stand to reason that as to why the petitioner would have indulged in an occurrence of committing fraud by manipulating electronic devices and thus withdrawing amount in his account and thus creating evidence against himself and hence would have been implicated easily, it is next submitted that the petitioner will not abscond rather will cooperate in the investigation and will present himself as and when required by the Investigating Officer of the case for eliciting the truth and proving his innocence. The learned Senior counsel further submits that the effort of the Company should be to get the misappropriated money back and not to send the petitioner to jail as by sending the petitioner to jail, no benefit will accrue to the Company, it is next submitted that this submission has been made in the context that petitioner is innocent and he will prove his innocence before the Investigating Officer that he did not indulge in any kind of misappropriation as such by sending him to jail, no useful purpose would be served.

6. Learned A.P.P. for the State and the learned Senior counsel for the informant oppose the prayer for anticipatory bail of the petitioner but are not in a position to rebut the submissions of the learned Senior counsel for the petitioner that

as to what manipulation was committed by the petitioner being a simple graduate in the electronic device in order to misappropriate such a huge amount of money of the Company and also that neither the bank nor the customers ever came forward with any kind of complaint against the petitioner and also that no fruitful purpose would be served by sending the petitioner to jail rather the case needs to be investigated in a fair manner.

7. Considering the submissions made by the learned Senior counsel for the petitioner, the petitioner above-named, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten 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 Sultanganj P.S. Case No. 29 of 2021 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

8. However, in the event, if the Investigating Officer of the case files an application before the learned trial court bringing to its notice that the petitioner despite giving assurance to the Court is not cooperating in the investigation or is not

presenting himself as and when required, in that event the learned trial court shall be at liberty to cancel the bail bonds of the petitioner after recording reasons.

9. Let a copy of this order be sent to the concerned P.S. through the learned trial court.

10. In the event, if charge-sheet is submitted against the petitioner connecting him with the offence, the petitioner would be at liberty to resort to his remedies available in accordance with law.

(Satyavrat Verma, J)

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