IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64971 of 2021

Arising Out of PS. Case No.-15 Year-2018 Thana- C.B.I CASE District- Patna

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SATISH KUMAR JHA S/o Late Kameshwar Jha Resident of Flat No. 101, Block-A, Aungbihar Apartment, Rani Talab, Sabaur Road, Bhagalpur, P.O.- Fatehpur, P.S.- Zeromile, Bhagalpur, District- Bhagalpur

... ... Petitioner/s

Versus

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

... ... Opposite Party/s

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Appearance :

For the Petitioner	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Shashank Shekhar Jha, Advocate
For the C.B.I.	:	Mr. Avanish Kumar Singh, Special P.P., C.B.I. Mr. Ambar Narayan, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

C.A.V. ORDER

10 25-02-2023

Heard Mr. S.D. Sanjay, learned Senior Counsel assisted by Mr. Shashank Shekhar Jha for the petitioner and Mr. Avanish Kumar Singh appearing on behalf of Central Bureau of Investigation.

The petitioner apprehends his arrest in connection with Special Case No.01 of 2020, RC No.15/S/2018, registered for the offences punishable under Sections 34, 120B, 409, 419, 420, 467, 468 and 471 of the Indian Penal Code and under Sections 13(i)(c) and 13(i)(d) of the Prevention of Corruption 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 documented the general meetings of SMVSSL and created false documents as general meeting register for concealing fraudulent divergence of funds from the government accounts to the various accounts of SMVSSL. In return of his services, SMVSSL paid huge money to him and his family members.

Mr. S.D. Sanjay, learned Senior Counsel for the petitioner submits that petitioner is innocent and has falsely been implicated in the present case. It is submitted that petitioner has got six criminal antecedents as stated in paragraph-3 of the bail petition. It is further submitted that neither the petitioner has been named as an accused in the FIR nor his name or signature has transpired in any supportive document filed by the prosecution alongwith the FIR and the name of the petitioner has wrongly and falsely been implicated in the instant case by the prosecution during the course of investigation without any reasonable basis merely on conjecture and surmises that the petitioner used to dictate to create the documents. It is submitted that the petitioner neither during his service period nor after his retirement, at any point of time, received any unaccounted money or illegal amount in his bank account(s). It is submitted on behalf of the petitioner that being the Sub-divisional Audit Officer he has no role in any manner to get the fund transferred in the name of SMVSSL nor he has filled up or deposited any cheque in the bank on behalf of the SMVSSL. From perusal of Letter No.28(PRA) dated 10.08.2017 and Letter No.6591 dated 21.08.2017, it appears that it was the official of the Bank of Baroda and some other banks after coming into connivance with the office bearers of SMVSSL fraudulently transmitted the fund from the Bank Account of D.M., Bhagalpur to the bank account of SMVSSL and committed the offence of fraudulent misappropriation of government money. It is further submitted that the sons of the petitioner are major and are working for gain and are earning their livelihood. They are self dependent and the flats were purchased by them by their own earnings.

Mr. S.D. Sanjay, learned Senior Counsel for the petitioner submits that petitioner is innocent and has falsely been implicated in the present case. It is submitted that petitioner has got five criminal antecedents as stated in paragraph-3 of the bail petition. The petitioner is not named in the FIR and his name surfaced during the course of investigation and C.B.I. has submitted charge sheet against several co-accused persons including this petitioner. It is further submitted that the petitioner cannot be said to be 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. The petitioner has not signed over the deposit slip. It is submitted that the allegation levelled in the charge sheet against the petitioner is not specific. As per the allegation, the petitioner, being the retired Sub-divisional Audit Officer, created false record of general meetings and used the record/ Minutes of Meeting as genuine for opening of bank accounts, amendments in by laws and other purposes for running the society. Neither any written content of the petitioner has been found nor any source of information has been provided as to how could they come to know that the petitioner had dictated the minutes. Handwriting of petitioner was not found. Petitioner is not the custodian of record. Two flats at Gaziabad booked in name of sons and daughter of petitioner for which Rs. 12.5 Lakh & Rs. 4.5 Lakhs was paid by SMVSSL during the period of 2012-14. No material in the charge sheet in support of such allegation as to whether the money was paid for this flat or to the builder . Admittedly, till date the possession of the flat has not been handed over to its purchasers for want of payment. Petitioner along with other accused maintained partial information of bank accounts and falsified the record pertaining to bank accounts and used false account books of SMVSSL as genuine. Questioned documents along with specimen handwriting/ signatures sent to CFSL, New Delhi. The report is not part of the charge sheet. There is no allegation against the petitioner that the petitioner wrote and signed any document. No handwriting of the petitioner has been found on any document. There is no signature of the petitioner found on any document. Petitioner never received any accounted money or illegal amount in his account. The two sons of the petitioner are independent and one is working in Army and other is working in the Bank. They booked a flat in their name and themselves paid Rs.10.00 lakh by cheque and they have got the receipt of payment made by them to the Developer, which has been granted by the developer. When the developer did not hand over the flat they have given legal notice. The daughter of the petitioner is also independent and is working. She has also booked a flat and has paid Rs. 18.00 Lakh, out of her own income. She has also served a notice to the Developer. The petitioner is aged about 67 years and is an ailing person. From the allegation in the charge sheet about dictating the minutes of the meeting by itself does not constitute any offence. Even if the allegation that certain payment for the booking of the flat was made by Smt. Manorma Devi of SMVSSL, by itself does not constitute any offence of cheating, forgery or breach of trust against the petitioner. Petitioner was not the beneficiaries from the alleged transactions and nothing has come against him showing his involvement or connivance or conspiracy to defraud state exchequer in connivance with the Bank officials. It is also submitted that the petitioner has qualified for the Triple Test, namely, (i) No flight risk of the petitioner as his entire family permanently reside in Bihar. One son of the petitioner is working in Indian Army and the other son is working in a public sector bank. The daughter of the petitioner is also working; (ii) there is no question of tampering of any document as all the evidences have brought on record along with the charge sheet and (iii) no custodial interrogation is required as the Investigating Agency has completed the investigation and submitted the charge sheet. It is lastly submitted that similarly situated several co-accused have been granted anticipatory bail by co-ordinate Bench of this Court such as Cr. Misc. No. (Mritunjay Prasad Singh vs. CBI), Cr. Misc. No. 11689 of 2022 (Sujit Kumar Srivastava vs. CBI), Cr. Misc. No. 10484 of 2022

(Bishwanath Dutta vs. CBI), Cr. Misc. No. 25551 of 2022 (Rajan Kumar Samaiyar vs. CBI) and in the case of Satender Kumar Antil Vs. Central Bureai of Investigation and another reported in 2022 SCC online 825

Per contra, learned counsel appearing on behalf of the C.B.I. vehemently opposed the bail application and submitted that there is sufficient oral as well as documentary evidence against this petitioner regarding his involvement in the said occurrence. It is submitted that during the period 2007 to 2010, the petitioner along with other co-accused persons were party to a criminal conspiracy and they misappropriated the amount remitted through Government account payee cheques issued in favour of B.D.O., Pirpainti by deliberately depositing and crediting the cheques in the bank account of Srijan and thus committed the offences of criminal misappropriation, cheating and criminal misconduct. Investigation disclosed that 7 alleged cheques were issued by DDC, Bhagalpur from bank account of Bank of Baroda and UCO Bank, in favour of BDO, Pirpainti. Fund under Indira Awas Scheme were transmitted to BDO, Pirpainti through these Government account payee cheques. Remaining two alleged cheques were issued by the District Welfare Officer, Bhagalpur in favour of BDO, Pirpainti from bank account of DWO, Bhagalpur at Indian Bank, Bhagalpur. Investigation further disclosed that an account payee cheque is required to be credited in the account of payee in whose favour the cheque is issued. In the present case, the cheque was in favour of BDO, Pirpainti and was presented with deposit slip of Srijan Mahila Vikas Sahyog Samiti in illegal manner. Hence, processing and passing of such voucher and crediting the amount in the account of Srijan by bank officials was illegal. It is further submitted that investigation disclosed that in pursuance of the said criminal conspiracy, the petitioner dishonestly filled in deposit slips/pay in slips, in respect of Cheque No.042290 dated 02.05.2009, Cheque No.056025 dated 18.09.2009 and joint deposit slip for Cheques No.564858, 564875. Through these deposit slip, these cheques were dishonestly presented in the banks on behalf of Srijan in illegal manner and produce of cheques were illegally credited in the bank account of Srijan. It is further submitted that Cheque No.042290 dated 22.05.2009 for Rs.2,60,75,000/- issued from current A/c No.10010100003736 of DDC, Bhagalpur in favour of BDO, Pirpainti was received in Pirpainti block which was presented in the Indian Bank, Bhagalpur with a deposit slip of Srijan, which deposit slip was filled in by this petitioner. It is further argued that deposit slip dated 30.08.2010 of Rs.53,48,680/- in A/c No.822726120 of Srijan in Indian Bank for collection of alleged two cheques bearing no.564858 and 564875, both dated 02.08.2010 for Rs.19,99,090/- and Rs.33,49,590/- respectively was submitted in Indian Bank. The deposit slip was filled in by this petitioner and was signed by co-accused, Sarita Jha on behalf of Srijan. In pursuance of the said criminal conspiracy, this voucher was processed as maker of Ajay Kumar Pandey and passed by Hare Krishna Adak, the then Assistant Manager, Indian Bank. The cheques could not have been traced in Indian Bank, but the intended account of Srijan was credited with the amount. It is also submitted that the petitioner is reluctant to face the trial and may flee away is clear from the fact that the learned Trial Court has issued order of proclamation under Section 82 Cr.P.C. against the petitioner on 04.02.2022 and report on the order has been submitted on 16.02.2022. Further, the learned Trial Court issued order of attachment under Section 83 Cr.P.C. against the petitioner on 22.02.2022. It is lastly submitted that supplementary final report in the present case is yet to be filed in the Court. There are many witnesses cited in the cases pertaining to the Srijan Scam who are residing in the area of Sabour and nearby. The petitioner is an influential person and he may influence the witnesses. He may also flee from the jurisdiction of the learned Trial Court to any other country with whom India has no extradition treaty, leading to unnecessary delay in the trial.

It has come on record that the petitioner was Sub Divisional Audit Officer, Co-operative Societies, Bhagalpur and he created false documents in the form of General Meeting Register of SMVSSL by dictating minutes of meeting of SMVSSL, whereas no such meeting took place. The petitioner has received Rs.12,50,000/- in three instances from Late Manorma Devi for the payment of Flat No.Emerald-1/605 in the name of his son Himanshu Shekhar Jha and Subhanshu Shekhar Jha. In the case diary at serial no.063/Page No.206 & 207, the statement of Bindu Thakur, the then Lekhadhikari has been recorded in which he has clearly stated that proceedings of the general meeting was recorded by him on the direction of the petitioner. In the case diary at serial no.064/Page No.212, the then Computer Operator at SMVSSL has supported the aforesaid statement of the Bindu Thakur. The most important evidence is of Sri Shubhranshu Shekhar, son of Sri Satish Kumar Jha (the petitioner) in which he has stated that on the directions of his father (the petitioner) he had opened the account at Indian Bank, Bhagalpur on 04.11.2010 and Rs.17,91,000/- were deposited in the said account on different dates. He has further stated that he does not know source of the funds and the account was usually handled by his father (petitioner). He has further stated that on the direction of the petitioner an account was opened in the name of his elder sister, Ms. Meenakshi Jha and her husband Sri Suman Kumar Jha at Indian Bank, Bhagalpur on 04.11.2010 and huge amounts were deposited on different dates but he does not know source of funds and this account was also usually handled by his father (petitioner). Thus, from the materials available on record, there is no iota of doubt that the false and fabricated minutes of meeting were used as genuine for opening bank accounts, statutory audit, amendment in by-laws and running day to day business of SMVSSL. The petitioner in connivance with office bearers of SMVSSL and others fraudulently documented the above said general meetings of SMVSSL and created false documents as general meeting register for concealing fraudulent divergence of funds from the government accounts to the various accounts of SMVSSL. In return of his services, SMVSSL paid huge money to him and his family members. Therefore, the petitioner has played crucial and pivotal role in concealing fraudulent divergence of funds from the government accounts to the various accounts of SMVSSL. I may rely on the judgment of the Hon'ble Apex Court in the case of **Y.S. Jagan Mohan Reddy Vs. C.B.I.** reported in **(2013) 7 SCC 439** in which the Hon'ble Apex Court has been pleased to held that economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. The economic offences having deep rooted conspiracies and involving huge loss of public funds need to be viewed seriously and considered as grave offences affecting the economy of the country as a whole and thereby posing serious threat to the financial health of the country. Learned counsel for the C.B.I. relied upon the judgment in the case of Kehar Singh Vs. State reported in AIR 1988 SC 1983 in which the Hon'ble Supreme Court has held that generally a conspiracy is hatched in secrecy and it may be difficult to adduce direct evidence of the same. The proseuction will often rely on evidence of acts of various parties in infer that they were done in reference to their common intention. The prosecution will also more often rely upon circumstantial evidence. The conspiracy can be undoubtedly proved by such evidence direct or circumstantial.

It is not in dispute that Srijan, which was into imparting vocational training to women, diverted government funds to its accounts between 2004 and 2013, in connivance with bank and State government officials. The amount involved is said to be over Rs.800 crore. It may not be out of place to mention here that corruption has several manifestations and affects people's lives in different ways. Widely, it undermines the rule of law, damages trust, hurts development and prevents governments from delivering on their duties.

Learned senior counsel for the petitioner submitted that several similarly situated co-accused has been granted bail by a co-ordinate Bench of this Court. In this regard, I may only say that no inflexible guidelines or straitjacket formula can be provided for grant or refusal of the anticipatory bail because all circumstances and situations of future cannot be visualised for the grant or refusal of anticipatory bail. In consonance with legislative intention, the grant or refusal of anticipatory bail should necessarily depend on facts and circumstances of each case.

Having considered the submissions made by the learned counsel for the parties, considering the gravity of the offence, circumstances of the case, particularly, the allegation of corruption and misappropriation of public funds as also the reasons as enumerated in the foregoing paragraphs, I am not inclined to grant anticipatory bail to the petitioner. Accordingly, this application is dismissed.

However, if the petitioner surrenders before the learned court below within four weeks from today and seek regular bail, the learned Court below would pass order in accordance with law without being prejudiced by this order.

(Anjani Kumar Sharan, J)

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