IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57109 of 2022

Arising Out of PS. Case No.-14 Year-2017 Thana- C.B.I CASE District- Patna

Golak Bihari Panda Son Of Shri Lingaraj Panda Resident Of Flat No.- 205, Baroda Kung, Block- G 54/2, East Of Kailash, New Delhi, Pin - 110065, Permanent Residence At Arabinda Nagar, Madhupatra, Cuttack, Odisha - 753010

... ... Petitioner/s

Versus

The Superintendent of Police, C.B.I. / ACU-V / AC-II / New Delhi New Delhi

... ... Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Prabhu Narayan, Advocate
		Mr. Krishna Chandra, Advocate
For the Opposite Party/s	:	Ms. Nivedita Nirvikar, Sr. Advocate

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV ORDER

3 27-04-2023 Heard learned counsel for the petitioner and learned Senior counsel counsel for the CBI.

The petitioner apprehends his arrest in connection with RC No. 14(A) of 2017, corresponding to Bhagalpur Kotwali (Tilakmanjhi) P.S. Case No. 505 of 2017, under Sections 120B, 409, 420, 467, 468 and 471 of the Indian Penal Code and Sections 13(2), 13(1)(d) of the Prevention of Corruption Act.

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

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

As per the prosecution case, the petitioner in collusion with other co-accused persons malafidely cleared cheque no. 592323 dated 24.01.2007, thereby caused wrongful loss to public money and wrongful gain with Srijan. The aforesaid cheque was bearing forged signature of the then District Magistrate, Bhagalpur and therefore, petitioner being Branch Manager of Bank of Baroda cleared the cheque without verifying the signature of drawer of the cheque.

Learned counsel for the petitioner submits that the petitioner is quite innocent and has no criminal antecedent. The petitioner was Branch Manager in Bank of Baroda, Bahagalpur Branch at the relevant point of time. The only allegation against the petitioner is that he passed transaction vide cheque no. 592323 dated 02.01.2007 which was issued by forging signature of District Magistrate and accordingly Rs. 1 crore was alleged to have been illegally diverted from the account of District Magistrate, Bhagalpur to the account of SMVSSL. He further submits that no complaint or objection, whatsoever, regarding the alleged transaction were made either by the DM, the account holder or any of the officials of District Treasury. The petitioner cleared the cheque bonafidely on the basis of vouchers made available to him by his subordinates. It is further submitted by learned counsel that the petitioner has fully co-operated with CBI during investigation and therefore, CBI did not feel it necessary to arrest the petitioner. Thus, it is submitted that no justifiable purpose would be served by sending the petitioner to jail since he has cooperated in the investigation all throughout and charge sheet has also been filed.

Learned counsel relies upon a judgment in the case of ***Sanjay Chandra vs. CBI*** reported in ***(2012) 1 SCC 40*** in which in para-46 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*** reported in ***2021 SCC Online SC 941*** 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 at 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."

Learned counsel for the petitioner lastly submits that the present case is based on documentary evidence and there is no any allegation against the petitioner to tamper the evidence or relevant documents and all evidences and documents are in the custody of CBI and CBI has also failed to prove that petitioner has gained any monetary benefit during entire investigation.

Learned Senior Counsel appearing on behalf of the CBI opposes the anticipatory bail application and submits that from perusal of record it is clear that this case pertains to infamous multi million Srijan Scam. She also submits that the petitioner in collusion with other co-accused persons malafidely cleared cheque no. 592323 dated 24.01.2007 thereby caused wrongful loss to public money and wrongful gain with Srijan. The aforesaid cheque was bearing forged signature of the then District Magistrat Shagalpur and therefore, petitioner being Branch Manager of Bank of Baroda must not have cleared the cheque without verifying the signature of drawer of the cheque. As per charge sheet, petitioner passed a loose cheque bearing forged signature of the then DM, Bhagalpur for an amount of Rs. 1 crore and the above said cheque no. 592323 dated

24.01.2007 for an amount of Rs. 1 crore was cleared by petitioner without verifying the signature of the drawer and also without verifying from cheque issue register. Thus, it appears that petitioner in conspiracy with other accused persons defalcated of Rs. 1 crore of government fund from the account of District Magistrate, Bhagalpur in the account of Srijan Mahila Vikas Sahyog Samiti Ltd. and thereby caused wrongful loss to the government money and wrongful gain to the Srijan.

Learned Senior Counsel for the CBI relies upon the judgment of ***Dipak Subhashchandra Mehta Versus Central Bureau of Investigation [AIR 2012 SC 949]***, in which Hon'ble Supreme Court has observed in para no.18 that:

"The court granting the bail should exercise its discretion in a judicious manner and not as a matter of course. Though at the stage of granting bail, a detailed examination of evidence and elaborate documentation of the merits of the case need not be undertaken. There is a need to indicate in such orders reasons for prima facie concluding why bail was being granted, particularly, where the accused is charged of having committed serious offence. The Court granting bail has to consider, among other circumstances, the factors such as **a)** the nature of accusation and severity of punishment in case of conviction and nature of supporting evidence; **b)** reasonable apprehension of tempering with the witness or apprehension of threat to the complainant and; **c)** prima facie satisfaction of the court in support of the charge. In addition to the same, the Court while considering a petition for grant of bail in a non-bailable offence apart from the seriousness of the offence likelihood of the accused fleeing from justice and tampering with the prosecution witnesses, have to be noted".

Having considered the rival submissions made on behalf of the parties and the fact that CBI has failed to prove that petitioner has gained any monetary benefit during the entire investigation, and for the reasons as enumerated in the foregoing paragraphs and relying upon the recent judgment of Hon'ble Apex 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 in connection with

RC No. 14(A) of 2017, corresponding to Bhagalpur Kotwali (Tilakmanjhi) P.S. Case No. 505 of 2017, 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)

anand/-

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