IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57582 of 2022

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

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Bijay Kumar Son Of Late Bhagwan Bhagat Resident Of Village And Post- Murliganj, P.S- Murliganj, Dist- Madhepura, At Present Residing At Uma Prem Lata Kunj, Flat No. 106, Near Medifino, Hospital, Daudbigha, P.S- Patrakar Nagar, Dist- Patna

... ... Petitioner/s

Versus

The State of Bihar through CBI/AC-ii, New Delhi New Delhi

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Chitranjan Sinha, Sr. Advocate
		Mr. Bijay Kumar Pathak, Advocate
For the Opposite Party/s	:	Ms. Nivedita Nirvikar, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

CAV ORDER

7 27-04-2023 Heard Mr. Chitranjan Sinha, learned Senior Counsel appearing on behalf of the petitioner, Ms. Nivedita Nirvikar, learned Senior Counsel for the C.B.I.

The petitioner apprehends his arrest in connection with Spl. Case No. 12/2020 RC No. 14/A/2017 corresponding to Bhagalpur Kotwali (Tilkamanjhi) P.S. Case No. 505 of 2017, registered for the offences punishable under Section 34, 120B, 409, 420, 467, 468 and 471 of the Indian Penal Code and Section 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 was posted as Nazarat Deputy Collector at Collectorate, Bhagalpur. Allegation against the petitioner that the then DM K.P. Rammaiah in criminal conspiracy with petitioner and other co-accused persons illegally opened an account with the bank of Srijan Mahila Vikas Sahyog Samiti Ltd. by depositing cash amount of Rs. 201, despite the clean knowledge that SMVSSL was not authorised to run banking business.

Learned counsel for the petitioner submits that the petitioner is a person with clean antecedent and the allegation against him is that as he was posted as Nazarat Deputy Collector at Collectoriate, Bhagalpur, the then District Magistrate in connivance with the petitioner opened an account with the bank of Srijan Mahila Vikash Sahyog Samiti Limited by depositing cash account of Rs. 201/- when they were aware that SMVSSL was not authorized to run banking business, thereafter Vide Letter No. 67 dated 07.02.2004, petitioner requested the Manager SMVSSL, Sabour to convert the current bank account CA-22 into saving bank account and the said current account was converted into saving bank account no. 1635.

Thereafter, petitioner, the then NDC approved to

Deposit Cheque No. 241601 dated 12.01.2004 of Indian Bank for Rs. 2.5 Crore in favour of Secretary SMVSSL. Further that on 06.02.2004 a Cheque Baring No. 241602 for Rs. 1 crore was issued in favour of Secretary, SMVSSL, both the cheques bore the signature of the then District Magistrate, Bhagalpur K.P. Rammaiah. Investigation also revealed that on 25.05.2004 interest of Rs. 1,16,667/- in this account as on 31.03.2004 has been calculated and reflected in the concerned register maintained with the District Nazarat Officer which was approved by the petitioner and the concerned page of the said register is also countersigned by Sri. K.P. Rammaiah.

Learned Senior counsel for the petitioner further submits that the petitioner has been falsely implicated in the present case. He further submits that from bare perusal of allegation as alleged in the FIR and the fact which transpired during the course of investigation, it would manifest that the account was opened by the then District Magistrate, K.P. Ramaiah with Rs. 201/-. It is next submitted that it is absolutely does not stand to reason that as to why the District Magistrate of a district on recommendation of the petitioner a Subordinate Officer would have issued cheque, it is also submitted that petitioner being a Subordinate Officer had no option but to obey the commands of the District Magistrate.

He further submits that only allegation against the petitioner is that in connivance with the other co-accused persons he approved transaction of huge amount of money amounting to Rs. 3.5 crore in the account of Srijan Mahila Vikas Shyog Samiti Ltd., Bhagalpur. He further submits that the alleged account was got opened by the then District Magistrate, Bhagalpur K.P. Rammaiah and alleged two transaction were done by the then District Magistrate, Bhagalpur himself and the petitioner being subordinate officer had not power to approve the transaction which was already approved by the then District Magistrate, Bhagalpur.

Learned Senior Counsel for the petitioner submits that the petitioner purely acted as per rules 323 and 324 of Bihar Board Miscellaneous Rule and Bihar Treasure Code Volume I Chapter III, Rule 86(i) which imposed the duty on the petitioner to make entries in the cash book.

Learned Senior Counsel for the petitioner fairly submits that it is true that the petitioner recommended for the payment of Rs. 3.5 crore in favour of DLAO because the same was requisitioned by DLAO for the purpose of payment of compensation to the land owners whose land was acquired by the govt. On the recommendation of petitioner that said payment be made from the account of DM maintained with Srijan, the then DM issued the aforesaid cheques, however in the meantime petitioner joined as APO, Munger, as per transfer order of the government and due to his transfer within seven days after sending the cheque to the DLAO. There was no occasion for him to know as to whether the said amount was received or not.

Learned Senior Counsel for the petitioner further submits that the petitioner has already co-operated with CBI throughout the investigation and the CBI never felt the need of arresting the petitioner and the charge-sheet has been submitted. Thus, it is submitted that no justifiable purpose would be served by sending the petitioner to jail as when has co-operated in the investigation. He submits that the present case is based on documentary evidence and there is no any allegation against the petitioner to temper the evidence or relevant document, all the documents are in the custody of the CBI.

Learned Senior 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 opposed the bail application and submits that from the perusal of the record, it is clear that the case pertains to infamous multi million Srijan Scam. As per para 16.2 and 16.5 of the charge-sheet, it appears that the petitioner was posted as Nazarat Deputy Collector at Collectorate, Bhagalpur. It has been alleged against the petitioner that the then D.M. K.P. Rammaiah in criminal conspiracy with petitioner and other co-accused persons illegally opened an account with the bank of Srijan Mahila Vikas Sahyog Samiti Ltd. by depositing cash amount of Rs. 201, despite the clean knowledge that SMVSSL was not authorised to run banking business. Thereafter, vide letter no. 67 dated 07.02.2004, Sri Bijay Kumar (petitioner) requested the Manager, SMVSSL, Sabour to convert to Current Account CA 22 into Saving Bank Account and the said current account was converted into Saving Bank Account No. 1635. Further, Sri Bijay Kumar (petitioner), the then NDC approved to deposit cheque no. 241601 dated 12.01.2004 of Indian Bank, Bhagalpur for Rs. 2.5 Crore in favour of 'Secretary, SMVSSL' which was deposited in the said illegal bank operated by SMVSSL. Investigation further revealed that on 16.02.2004, a cheque bearing no. 241602 of Rs. 1 crore issued in favour of 'Secretary SMVSSL'. Both of these cheques bore the signature of Sri. K.P. Rammaiah, the then DM, Bhagalpur. Investigation also revealed that on 25.05.2004 interest of Rs. 1,16,667/- in this account as on 31.03.2004 has been calculated and reflected in the concerned register maintained with the District Nazarat Officer which was approved by Sri Bijay Kumar (petitioner) and the concerned page of the said register is also countersigned by Sri. K.P. Rammaiah.

Learned Senior Counsel for the CBI further submits that the then DM, Bhagalpur for financial transaction and one the recommendation of the petitioner the then DM, Bhagalpur issued cheque No. 241601 dated 12.01.2004 for amount of Rs. 2.5 crore and cheque Bearing No. 241602 dated 16.02.2004 for Rs. 1 Crore issued in favour of 'Secretary, SMVSSL'. The petitioner being on responsible post well aware of the fact that no government transaction can be made with a bank which is not authorized or permitted by RBI to conduct banking business. It appears that, despite, their knowledge other accused persons thereby calls deflection of huge amount of government money into account of SMVSSL. She further submits that the petitioner play crucial role in the deviation of the government fund to the tune of Rs. 3.5 crores to the SMVSSL without any reason.

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 ispending/successor Court in connection with Spl. Case No. 12/2020 RC No. 14/A/2017 corresponding to Bhagalpur Kotwali (Tilkamanjhi) 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)

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