IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59984 of 2022

Arising Out of PS. Case No.-11 Year-2017 Thana- C.B.I CASE District- Patna

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BIRENDRA PRASAD YADAV Son of Sadhu Sharan @ Sadhu Sharan Yadav Resident of Village- Bhullo P.O. and P.S.- Sikandra, District- Jamui

... ... Petitioner/s

Versus

THE CENTRAL BUREAU OF INVESTIGATION, DELHI

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shivam Kumar, Advocate
For the Opposite Party/s : Ms. Nivedita Nirvikar, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

6 24-06-2023 Heard learned counsel for the petitioner and Ms. Nivedita Nirvikar, learned Senior Counsel appearing for the C.B.I.

The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 120-B, 409, 420, 467, 468, 471 and 474 of the Indian Penal Code and Sections 13(2), 13(1)(c) and Sections 13(1)(d) of Prevention of Corruption Act, 1988.

Learned counsel for the petitioner submits that the petitioner is a person with clean antecedent and is an I.A.S. officer. Learned counsel next submits that during the course of investigation the name of this petitioner transpired in the supplementary charge-sheet submitted by the C.B.I., it is further submitted that from perusal of the charge-sheet, it would manifest that the petitioner in collusion with the staff and other including office bearers of SMVSSL got two accounts which was in the name of District Magistrate, Bhagalpur at P.N.B. and Oriental Bank of Commerce closed, thereafter, two new accounts were opened, one with the Indian Bank and another with Bank of Baroda, the charge-sheet further reveals that reasons for closing of old accounts were not sound because the new banks were also not situated close to the Collectorate area, further after opening of new account, petitioner issued two cheques bearing no. 929062 for an amount of Rs. 12,20,15,075/- only and cheque no. 744088 for an amount of Rs. 9,75,63,047/-, both the cheques were issued in the name of Manager, Indian Bank instead of issuing the same in the name of District Magistrate, Bhagalpur, when the accounts were opened in the name of District Magistrate, Bhagalpur, further the petitioner was not able to explain to the C.B.I. as to why he issued aforesaid cheques in favour of Manager, Indian Bank instead of District Magistrate, Bhagalpur, the charge-sheet further reveals that the petitioner put his signature at the back of the aforesaid two cheques which made the cheque bearer, further above his signature at the back of the aforesaid two cheques there was an endorsement to the effect that cheques were to be credited in the account of SMVSSL, the charge-sheet further reveals that one of the two cheques was presented at the Oriental Bank of Commerce for clearance, when the then Branch-Manager of Oriental Bank of Commerce Tilka Manjhi visited the petitioner and showed him the cheque and the endorsement above his signature at the back of the cheque, but the petitioner insisted upon transfer of fund in the account of SMVSSL.

Learned counsel, Shivam Kumar, appearing on behalf of the petitioner submits that petitioner is an I.A.S. officer and has an unblemished service record, it is next submitted that initially when the FIR was instituted, the petitioner was not named in the FIR, thereafter, two charge-sheets were submitted, but the name of the petitioner did not figure, it is further submitted that only in the third charge-sheet the name of the petitioner figured and that too after three years of the registration of the FIR. Learned counsel next submits that petitioner for a brief period was posted as District Magistrate, Bhagalpur from 18.7.2014 to 14.08.2015, it is further submitted that though the allegation against the petitioner is that he issued two cheques and signed the cheques on its back but only one cheque got credited in the account of SMVSSL, it is further submitted that the cheques were bonafidely signed and only after receiving the report that the aforesaid cheques would be credited in the account of District Magistrate, Bhagalpur, that the same was signed, however, the then *Nazir* played foul and got the cheques credited in the account of SMVSSL, as such, petitioner did not had the occasion to detect the fraud.

Learned counsel next submits that it absolutely does not stand to reason that why the petitioner after signing the cheque would have also signed behind the back of the cheque making it bearer and then would have allowed the same to be deposited in the account of SMVSSL and thus created evidence against himself, this amply demonstrates that petitioner without any ill intention or may be in routine manner had committed the said mistake under bona fide inadvertence. Learned counsel next submits that from submission made hereinabove, it is clear that petitioner was initially not named in the FIR and his name transpired in the third charge-sheet with the allegation as alleged, it is next submitted that petitioner all throughout has cooperated in the investigation and the C.B.I. never felt the need of arresting the petitioner, it is also submitted that now charge-sheet has been filed and the petitioner being a responsible I.A.S. officer would not abscond rather will co-operate in the trial.

Learned counsel further submits, at the cost of repetition, that though there is allegation that petitioner issued two cheques but then only one of the cheques was credited in the account of SMVSSL on account of mistake committed by the then Manager.

Learned counsel next submits that by order dated 15.11.2022, the C.B.I. was asked to file a counter affidavit clearly recording that as to what justifiable purpose would be served by sending the petitioner to jail when the C.B.I during the course of investigation never felt the need of arresting the petitioner and the petitioner all throughout co-operated in the investigating and even the charge-sheet has been submitted.

Learned Senior Counsel appearing on behalf of the C.B.I. opposes the anticipatory bail application of the petitioner and submits that a counter affidavit on behalf of the C.B.I. has been filed wherein at Para-14 it has been clearly stated that it was the petitioner who had requested the bank to deposit the said cheques in the account of SMVSSL and his signature also stands confirmed by the C.F.S.L Report.

Learned Senior Counsel appearing for the C.B.I. next submits that from perusal of Para-22 of the counter affidavit, it would manifest that the same clearly records that how petitioner was involved in the occurrence in conspiracy with Sri Amrendra

Kumar Yadav. Learned Senior Counsel next submits that the C.B.I. apprehends that the petitioner may influence the witnesses.

The learned counsel for the petitioner rebuts the submission of the learned Senior Counsel for the C.B.I. and submits that the charge-sheet has been filed and evidences stand recorded in the diary, as such the apprehension of the C.B.I is uncalled for.

Considering the submissions made by the learned counsel for the petitioner, the petitioner above-named, in the event of his arrest or surrender before the learned trial court 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 trial court where the case is pending/successor court in connection with Special Case No. 05 of 2020 arising out of RC No. 11(A) 2017 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

However, it is made clear that in the event, if the learned Trial Court comes to a conclusion that the petitioner after obtaining bail is trying to delay the trial in any manner then the learned Trial Court shall be at liberty to cancel the bail bonds of the petitioner after recording reasons.

Accordingly, the present anticipatory bail application stands allowed.

(Satyavrat Verma, J)

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