IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61924 of 2022

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

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SANAT KUMAR JHA S/O Late Sahdeo Jha Resident of 302, Patliputra Enclave, Nehru Nagar, Behind Patliputra , P.S- Phulwari Patliputra, Patna-800013

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Central Bureau of Investigation, CBI, through the Deputy Superintendent of Police ACU- IV, AC- II, CGO complex, Lodhi Road, New Delhi- 110003

... ... Opposite Party/s

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

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
CAV ORDER

2 27-04-2023 Heard learned counsel appearing on behalf of the petitioner and learned Senior Counsel appearing on behalf of the Central Bureau of Investigation.

The petitioner apprehends his arrest in connection with CBI Special Case No. 12 of 2020 arising out of RC Case No. 14(A) of 2017 corresponding to Bhagalpur Kotwali (Tilkamanjhi) P.S. Case no. 505 of 2017, registered for the offences punishable under Sections 409, 420, 467, 468, 471, 120(B) and 34 of the Indian Penal Code and Section 13(2), 13(1)(d) of the Prevention of Corruption Act, 1988.

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).

The prosecution case, in brief, is that the petitioner was working as Branch Manager in Indian Bank, Bhagalpur where after closing old account of DM, Bhagalpur a new account was opened in the name of DM, Bhagalpur by petitioner without following KYC norms. It has been further alleged that in conspiracy with the then DM K.P. Rammaiah and other co-accused persons, petitioner authenticated the transaction of Rs. 1 crore by making his initial on the internal credit voucher dated 19.02.2004 pertaining to cheque bearing no. 241602 dated 16.02.2004 issued by DM Bhagalpur in favour of SMVSSL. Before this transaction cheque bearing no. 241601 dated 12.01.2004 of Indian Bank Bhagalpur issued by DM Bhagalpur in favour of SMVSSL for Rs. 2.5 crore has also been transferred to the account of SMVSSL on his direction. He is also alleged to have instructed his subordinate bank officials to send a cheque bearing no. 8226 for an amount of Rs. 3.5 crore of illegally operated bank of SMVSSL which was issued by the then DM K.P. Rammaiah in favour of DLAO, Bhagalpur to

SMVSSL bank but the payment of the same could not be released in the account of DLAO Bhagalpur.

Learned counsel for the petitioner submits that petitioner is quite innocent and has nothing to do with the alleged offence. He submit that the petitioner has got no criminal antecedent. He submits that the petitioner is not named in the FIR and his name surfaced during the investigation. He further submits that the petitioner was Branch Manager at Indian Bank Bhagalpur from August 2002 till June 2005 and he opened an account in the name of District Magistrate, Bhagalpur without KYC formalities since the account was government account therefore, KYC formalities were bonafidely not observed by the petitioner. The petitioner has 33 years of unblemished service track record. No one had made any complaint against him. The petitioner authenticated deposit voucher or cheques which were in the name of SMVSSL and the cheques were issued by DM Bhagalpur, therefore, authentication was not illegal. He further submit that if any person who is culprit in this case, he is K.P. Rammaiah, who is the then DM Bhagalpur, who issued several cheques in the name of SMVSSL. He submits that the material on record does not make out even a prima facie case against the petitioner as no money trail connects the petitioner even remotely. The petitioner is 64 years old man and suffering from so many disease. The investigation in this case has already completed and all the documentary evidence has already been collected by CBI Therefore, there is no chance of tampering with the evidence.

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 for the CBI opposes the anticipatory bail application and submits that petitioner in conspiracy with other co-accused persons had been instrumental in illegally diverting a huge amount of government fund in the account of SMVSSL. She further submits that petitioner was the Branch Manager at Indian Bank, Bhagalpur and in conspiracy with the then DM Bhagalpur Sri K.P. Rammaiah, he opened an account in the name of DM, Bhagalpur on 16.12.2003 without following KYC norms. Thereafter petitioner authenticated illegal transactions in favour of SMVSSL causing huge wrongful loss to public fund and wrongful gain to SMVSSL and other persons. She submits that from perusal of the record, it is clear that this case pertains to infamous multi million Srijan Scam. As per charge sheet and other materials on the record it is clear that petitioner was working as Branch Manager in Indian Bank, Bhagalpur where after closing old account of DM, Bhagalpur a new account was opened in the name of DM

Bhagalpur by petitioner without following KYC norms. it has been further alleged that in conspiracy with the then DM K.P. Rammaiah and other co-accused persons, petitioner authenticated the transaction of Rs. 1 crore by making his initial on the internal credit voucher dated 19.02.2004 pertaining to cheque bearing no. 241602 dated 16.02.2004 issued by DM Bhagalpur in favour of SMVSSL. Before this transaction cheque bearing no. 241601 dated 12.01.2004 of Indian Bank Bhagalpur issued by DM Bhagalpur in favour of SMVSSL for Rs. 2.5 crore has also been transferred to the account of SMVSSL on his direction. He is also alleged to have instructed his subordinate bank officials to send a cheque hearing no. 8226 for an amount of Rs. 3.5 crore of illegally operated bank of SMVSSL which was issued by the then DM K.P. Rammaiah in favour of DLAO, Bhagalpur to SMVSSL bank but the payment of the same could not be released in the account of DLAO Bhagalpur.

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 arising out of 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)

anand/-

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