IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2891 of 2023

Arising Out of PS. Case No.-10 Year-2022 Thana- C.B.I CASE District- Patna

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Prabhanshu Shekhar Son Of Late Vijay Kumar Paswan Resident Of Flat No. 301, Abhinav Apartment, Ashiana Digha Road, P.S.- Rajeev Nagar, District- Patna ... ... Petitioner/s

Versus

The Union of India through C.B.I New Delhi ... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Anil Kumar Singh
For the Opposite Party/s : Mr.Nivedita Nirvikar

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR
ORAL ORDER

8 05-09-2023 Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner has prayed for regular bail in a case registered for the offence punishable under sections 120-B of the Indian Penal Code and Sections 7 and 8 of P.C.(As amended in 2018) Act, 1988.

3. The prosecution case in short, is that, the information received from reliable sources while alleging corrupt and illegal activities of the accused persons, namely, Sadre Alam, Chief General Manager and Regional Officer, NHAI, Patna and this petitioner, namely, Prabhuanshu Shekhar, Deputy General Manager and Project Director, NHAI while acting in collusion with S. Rajbhar, General Manager, M/s- Ashoka Buildcon Ltd, engaged in road construction and other allied activities with respect to the ongoing works awarded to them by NHAI, in lieu of obtaining undue advantage from the company. Further alleged that

M/s. Ashoka Ltd had bagged the tender for construction of a Highway stretch of NH 139 Arah-Mohania in Bihar which is under construction and the above mentioned public servants in connivance with officials of M/s. Ashoka Ltd are indulging in clearing inflated bills, manipulation of measurement books and turning a blind eye to the usage of cheap quality materials by the company causing huge wrongful gains to themselves and the company causing huge wrongful loss to the Government exchequer. It is further alleged that on 28.07.2022, this petitioner and co-accused Sadre Alam talked to S. Rajbhar about his ill health after which the petitioner instructed S. Rajbhar to meet RO along with bribe money as soon as he recovered and then S. Rajbhar assured both of them that he would meet them immediately after his recovery. Further, on 05.08.2022, S. Rajbhar informed to M/s. Ashoka Buildcon Ltd that bribe money of Rs. 10 lakhs out of total pending bribe dues of Rs. 15 lakhs had to be delivered to co-accused Sadre Alam for passing the bills. Thereafter on 11.08.2022, Rs. 10 lakhs bribe money was handed over to Sadre Alam at his residence in Patna by an employee of M/s. Ashoka Ltd and on 22.08.2022 another co-accused Mukul Kumar informed S. Rajbhar that bribe money was also dues to be delivered to this petitioner and thereafter S. Rajbhar delivered the said amount to the house of the petitioner through an employee at the residence of this petitioner. It is also alleged that on 22.09.2022, co-accused Mukul Kumar requested S. Rajbhar to obtain some time from Sadre Alam for effecting delivery of the bribe money meant for the month of September, 2022 and the same has been informed to Sadre Alam and he had agreed to collect the bribe money on 23.09.2022. Thereafter, this case has been lodged against the co-accused persons including this petitioner.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has committed no offence. He has falsely been implicated in this case due to highhandedness and arbitrariness of the officials. It is further submitted that from perusal of the FIR of the CBI that there are three part of allegations against the petitioner along with other co-accused persons i.e., “Clearing of Inflated Bills”- in this regard, submission would be that on behalf of the petitioner, this allegation is not based upon any documentary or oral evidence rather the same is a result of day dreaming of the CBI who did not take any effort to verify the procedure of clearing bills of the project executed by the NHAI. Every bill has to be prepared on the basis of work executed by the agency, which got entered the MB(Measurement Book), verified by the consultant expert agency and re-verified by the officials of the NHAI in accordance of

prevailing rules and practice. Thereafter, every bill subjected to scrutiny by the internal as well as external audit. It is admitted position that from the initiation of bills till passing of the same, there are several methods to check and balance to negate any false claim or bill of the agency. In this background, it is submitted that due to endeavour of the petitioner, an amount of Rs. 9.68 Cr. of the agency has been withheld in Package-1 and Rs. 2.16 Cr. has been withheld in Package-2 which would be apparent from interim payment certificate No.17 and 18. So the allegation of FIR is totally incorrect in the facts and circumstances of this case. It is also submitted that the allegation with respect to "Manipulation of Measurement Books" and "Turning a blind eye for using the cheap quality construction materials" by the company causing huge wrongful loss to the exchequer are also baseless and frivolous as it is submitted that the measurement book had been prepared after tallying with the work done by the agency. The measurement book has to be prepared by Site Engineer and verified by the Consulting Expert and re-verified by the Engineers of NHAI by doing physical verification of the work, therefore, as per the knowledge of the petitioner, no one can tamper in the measurement book in any manner and further in respect of using cheap quality material, this allegation is also not correct because there is provision of in house and out house quality control checking systems which are being done as per higher standard. The quality control of the work executed by the agency was done from time to time and that would be apparent from the quality test report and in this regard, petitioner was personally having an eye of the execution of the work and that was the reason that for slightest diversion in the quality, he immediately directed the agency to rectify the same without delay and in support of this, Annexure-3 which is quality test report and complaint of the petitioner has been annexed in this petition, so the allegation of CBI against the petitioner of taking advantage is not correct and also CBI has not produced any proper evidence with regard to alleged allegation on the petitioner. So far as the recovery of cash and gold ornaments from the house of the petitioner is concerned, it is humbly submitted that for the emergency medical necessity, cash has to be kept in the house as his son is suffering from *Autism* disease since birth. The elder son of the petitioner has obtained good rank in MET, 2022 exam for these requirements, the fund had been arranged after taking Rs. 4, 45,000/- from Geeta Devi, Mother of the petitioner who is pensioner lady and she got about 13 lakhs after her retirement and Rs. 1,50,000/- from Akash Deep, brother-in-law of the petitioner, so it is not ill gotten money of any kind. So far as the recovered ornaments and other items are concerned, they are parts of ancestral property of the petitioner and his in-laws and the petitioner has already declared everything to his department as per requirement of law. Charge sheet has already been submitted in this case against the petitioner without completing the investigation which is clear from the counter affidavit filed by the CBI. So far as the recovery of the 6.53 lakhs cash is concerned which the CBI has said that the same is bribe money, petitioner has clarified about the said money which was recovered from his house, and in support of this, several documentary evidence have been annexed in the supplementary affidavit of the petition. It is also submitted that petitioner has no concern with the said occurrence and also neither he has taken any bribe money nor he has taken any wrongful gains being on the post of Dy. General Manager from the said company officials.

5. Learned APP appearing for the state and learned counsel on behalf of the CBI have opposed the prayer of regular bail and submitted by way of counter affidavit filed by the CBI in which, they said that the petitioner used to take bribe from the said company on monthly basis and in support of this several documents have been annexed in the counter affidavit on behalf of the CBI and also from the co-accused person, namely, Amit Kumar and Mukul Kumar, several excel sheets have been recovered from their house in which there are details about the bribe money which were being paid on monthly basis to the co-

accused persons including this petitioner. It is further submitted that during the course of investigation, M/s RITES(Schedule-A Enterprises of Govt. of India) was engaged for assessment of execution of work by M/s Ashoka Buildcon Ltd and they observed that work either not executed as per agreement or executed partially and further CSIR(Central Road Research Institute), New Delhi came for measurement and quality Audit of the Project, and in this regard, CSIR has submitted its report and pointed out that several executed work as Doubtful. It is also submitted that when the search had been conducted in the house of the petitioner, the said amount and said ornaments along with some other materials have been recovered and in respect of these recoveries, petitioner could not explain about the same.

Learned counsel for the petitioner submitted by way of his rejoinder affidavit with respect to the allegations made by CBI through their Counter affidavit :- CBI has not done the forensic audit of the laptop or desktop of the company or contractor or its employee to confirm the existence of so called excel sheets which were recovered by the co-accused persons only on the basis of recovery of so-called excel sheet, made allegation against the petitioner. Further the report of the RITES is only with regard to measurement checks of completed work and also the report of the RITES has not been accepted by the NHAI for any purpose and

CBI only on the basis of tentative findings, produced partial documents in their counter affidavit.

6. Having heard learned counsel for the parties and considering the facts and circumstances of the case as well as custody of the petitioner, this court is inclined to enlarge the petitioner on bail. The above named petitioner is directed to be released on bail in connection with Special Case No. 4/2022 arising out of R.C. No. 10 (A) of 2022 on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge-CBI-III, Patna.

(Sunil Kumar Panwar, J)

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