IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11252 of 2024

Arising Out of PS. Case No.-19 Year-2017 Thana- C.B.I CASE District- Patna

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Rajni Priya, Wife of Late Amit Kumar, Resident of 103, Brahman Tola, P.S. -Sabaur, Village - Sabaur, Anchal - Sabaur, Bhagalpur, Bihar, Pin – 813210.

... ... Petitioner/S

Versus

The State through Central Bureau of Investigation.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Avinash Kumar, Advocate
		Mr. Ajeet Kumar, Advocate
For the Opposite Party/s :		Mrs. Nivedita Nirvikar, Sr. Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA

ORAL ORDER

7 09-08-2024

1. Heard learned senior counsel appearing on behalf of the petitioner and Mrs. Nivedita Nirvikar learned senior counsel appearing on behalf of C.B.I.

2. The petitioner seeks bail in connection with R.C. Case No. 19(A)/2017 corresponding to Special Case No. 07/2019, registered for the offence under Sections 409, 420, 467, 468, 471, 34, 120B of the Indian Penal Code and Sections 13(2) & 13(1)(c) & (d) of Prevention and Corruption Act, 1988.

3. The accused/petitioner is not named in the F.I.R. and is in custody since 11.08.2023.

4. The fact as set out in the F.I.R., alleges that the office bearers including the petitioner herein, created forged record and minutes of the meeting of Shrijan Mahila Vikas Sahyog Samiti Ltd. (hereinafter referred to as 'SMVSSL') and used the same as genuine for opening of the bank accounts, by concealing the facts, from appropriate authorities, committing thereby criminal breach of trust, and also committed cheating and dishonesty inducing delivery of property.

5. Learned counsel appearing on behalf of the petitioner submitted that petitioner is an innocent lady and has been falsely implicated with this case. In support of submission of false implication, it is submitted that for the only reason, as petitioner was authorized signatory of bank accounts of SMVSSL, implicated with present case. It is further submitted that, during the course of investigation, it is surfaced that Smt Sarita Jha was also one of the authorized signatory of bank after the death of Smt. Manorma Devi. It is submitted that

similarly situated accused namely, Sarita Jha has already been granted bail by this Court through Cr. Misc. No. 51547 of 2021 dated 28.04.2022, whereas one of the co-accused, namely, Pankaj Kumar Jha granted bail by Hon'ble Apex Court through Criminal Appeal No. 484 of 2020 (Arising out of SLP (Crl.) Nos. 1530 of 2020) dated 17.07.2020, considering the fact that investigation is complete. It is further submitted that investigation in this case is complete for which chargesheet has already submitted, as such, there is no chance of tampering with evidence. While concluding the argument, it is submitted that by taking note of all allegations in totality, in the background of legal proposition as laid down by Hon'ble Supreme Court, while deciding the matter in ***Nimmagadda Prasad Vs. Central Bureau of Investigation reported in (2013) 7 SCC 466,*** this is a fit case to grant bail to the petitioner, where paragraph no. 24 of the judgement, observed as:

> *"24. While granting bail, the Court has to keep in mind the nature of accusations, the nature of evidence in support thereof, the severity of the punishment which conviction will entail, the character of the accused, circumstances which are peculiar to the accused, reasonable possibility of securing the presence of the accused at the trial, reasonable apprehension of the witnesses being tampered with, the larger interests of the public/State and other similar considerations. It has also to be kept in mind that for the purpose of granting bail, the legislature has used the words "reasonable grounds for believing" instead of "the evidence" which means the Court dealing with the grant of bail can only satisfy itself as to whether there is a genuine case against the accused and that the prosecution will be able to produce prima facie evidence in support of the charge. It is not expected, at this stage, to have the evidence establishing the guilt of the accused beyond reasonable doubt."*

6. It is stated by learned counsel appearing on behalf of petitioner that this petitioner was implicated in capacity of holding post of Secretary in Cooperative Society, which was established in year 1996 itself. The only allegation against this petitioner is that she returned some amount vide four cheques in the account no.

7651(Old)/548672141 of D.M., Bhagalpur between 18.02.2017 to 29.03.2017. It is submitted that the marriage of the petitioner was an arranged marriage and same was solemnized in year 2009 only with the son of Manorama Devi, who was the main accused. It is submitted that before marriage, petitioner or her family members were not aware as to what was going between SMVSSL and the District Officials. It is further submitted that the Manorama Devi, mother-in-law of the petitioner expired on 13.02.2017 and thereafter this petitioner took over the charge as the Secretary of Srijan Mahila Vikas Sahyog Samiti Limited through Special Proceeding conveyed by District Officials, immediately after the death of Manorama Devi, where the petitioner was not present and only signed the register which was brought to her matrimonial home. It is submitted that appointment of petitioner as Secretary of the Samiti was carried out in such a haste manner that even petitioner could not understood as to why the District

Administration was so much interested in the affairs of SMVSSL. It is submitted that in totality, petitioner served as a Secretary for only about five months, for which prosecution has not been able to show *prima facie* that any act of misrepresentation, cheating or forged document being prepared by this petitioner, for the purpose of misappropriating the government fund. Learned counsel while concluding the argument, relied upon the legal report of ***Niranjan Singh & Another Vs Prabhakar Rajaram Kharote & Ors.*** Reported in ***1980 (2) SCC 559*** and also upon ***Teesta Atul Setalvad Vs State of Gujarat*** reported in ***2023 SCC Online SC 860.*** It is further submitted by learned counsel that petitioner is not a holder of Indian Passport and therefore, the question of her absconding or to leave country is baseless.

7. Learned senior counsel, Mrs. Nivedita Nirvikar appearing on behalf of the C.B.I. opposes the prayer of bail and submitted that the present case is a

big scam dealing with the public money. It is submitted that large public money was misappropriated by the petitioner by signing cheques in collusion with other co-accused, but fairly conceded that number of accused persons have already been granted bail by this Court and she also found in agreement that co-accused, namely, Sarita Jha, having similar allegations, has already been granted bail by one of the learned Co-ordinate Bench of this Court through Cr. Misc. No. 51547 of 2021 dated 28.04.2022.

8. Learned senior counsel for the CBI has also relied upon a judgement of ***Central Bureau of Investigation, Hyderabad Vs. K. Narayana Rao***, reported in, ***(2012) 9 SCC 512***, where, it has been held by the Hon'ble Apex Court that:

> ***"24.*** *The ingredients of the offence of criminal conspiracy are that there should be an agreement between the persons who are alleged to conspire and the said agreement should be for doing of an illegal act or for doing, by illegal means, an act which by itself may not be illegal. In other words, the essence of criminal conspiracy is*

> *an agreement to do an illegal act and such an agreement can be proved either by direct evidence or by circumstantial evidence or by both and in a matter of common experience that direct evidence to prove conspiracy is rarely available. Accordingly, the circumstances proved before and after the occurrence have to be considered to decide about the complicity of the accused. Even if some acts are proved to have been committed, it must be clear that they were so committed in pursuance of an agreement made between the accused persons who were parties to the alleged conspiracy. Inferences from such proved circumstances regarding the guilt may be drawn only when such circumstances are incapable of any other reasonable explanation. In other words, an offence of conspiracy cannot be deemed to have been established on mere suspicion and surmises or inference which are not supported by cogent and acceptable evidence".*

9. Learned senior counsel for the CBI has further relied upon a judgement of ***Central Bureau of Investigation Vs. V.C. Shukla and others,*** reported in, ***(1998) 3 SCC 410***, where, it has been held by the Hon'ble Apex Court that:

> ***"40.*** *Following conclusion of our discussion on Section 34 of the Act we may now turn to the principle and scope of Section 10 of the Act and its applicability to*

the entries in question. This section reads as under:

> *"10. Things said or done by conspirator in reference to common design.—Where there is reasonable ground to believe that two or more persons have conspired together to commit an offence or an actionable wrong, anything said, done or written by any one of such persons in reference to their common intention, after the time when such intention was first entertained by any one of them, is a relevant fact as against each of the persons believed to be so conspiring, as well for the purpose of proving the existence of the conspiracy as for the purpose of showing that any such person was a party to it."*

In dealing with this section in Sardul Singh v. State of Bombay [AIR 1957 SC 747 : 1958 SCR 161] this Court observed that it is recognised on well-established authority that the principle underlying the reception of evidence of the statements, acts and writings of one co-conspirator as against the other is on the theory of agency. Ordinarily, a person cannot be made responsible for the acts of others unless they have been instigated by him or done with his knowledge or consent. This section provides an exception to that rule, by laying down that an overt act committed by any one of the conspirators is sufficient, (on the general principles of agency) to make it the act of all. But then, the opening words of the section make it abundantly clear that such concept of agency *can be availed of, only, after the Court is satisfied that there is reasonable ground to believe that they have conspired to commit an offence or an actionable wrong. In other words, only when such a reasonable ground exists, anything said, done or written by any one of them in reference to their common intention thereafter is relevant against the others, not only for the purpose of proving the existence of the conspiracy but also for proving that the other person was a party to it. In Bhagwan Swarup v. State of Maharashtra [AIR 1965 SC 682 : (1964) 2 SCR 378] this Court analysed the section as follows:*

> *"(1) There shall be a prima facie evidence affording a reasonable ground for a court to believe that two or more persons are members of a conspiracy; (2) if the said condition is fulfilled, anything said, done or written by any one of them in reference to their common intention will be evidence against the other; (3) anything said, done or written by him should have been said, done or written by him after the intention was formed by any one of them; (4) it would also be relevant for the said purpose against another who entered the conspiracy whether it was said, done or written before he entered the conspiracy or after he left it; and (5) it can only be used against a co-conspirator and not in his favour.*

10. Considering the facts and circumstances as

mentioned above, as allegation against this petitioner, who is a lady, having no exclusive role attributed to control the affairs of the Samiti coupled with the fact that chargehseet has already been submitted, let the petitioner, above named, is directed to be released on bail in connection with R.C. Case No. 19(A)/2017 corresponding to Special Case No. 07/2019, on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, CBI-II, Patna, subject to the following conditions that:-

> (i) That petitioner shall not interact with prosecution witnesses during the trial in any manner or to influence any witness, failing which, the State shall be at liberty to move before the Trial Court itself for the cancellation of bail bond of the petitioner.
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> (ii) Accused/Petitioner shall cooperate in the trial and shall be physically present on each and every date after framing of charge before the Trial Court till conclusion of the trial and exemption from physical appearance be allowed by the Trial Court, only on medical ground of the petitioner duly supported by the documents.

(iii) Petitioner shall not leave country without prior permission of learned trial Court and if she is not a holder of Indian Passport, same can be apply only after obtaining due permission from the court concerned.

(Chandra Shekhar Jha, J)

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