

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8070 of 2024

Arising Out of PS. Case No.-12 Year-2018 Thana- C.B.I CASE District- Patna

Nand Kishore Malviya S/O Late Tripurari Tiwari R/O Mohalla- Near Lajpat Park, Behind Zila School, In Front Of Kala Kendra, Kharman Chak, P.S- Kotwali, Distt.- Bhagalpur.

... .. Petitioner/S

Versus

The Central Bureau Of Investigation (C.B.I), Patna. Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Uday Pratap Singh, Advocate
For the CBI	:	Mr. Avanish Kumar Singh, SPP, CBI
	:	Mr. Ambar Narayan, Advocate
	:	Mrs. Barkha, Advocate
	:	Mr. Mukul Kr. Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

8 23-08-2024 Heard Mr. Uday Pratap Singh, learned counsel for the petitioner and Mr. Avanish Kumar Singh, learned Special Public Prosecutor for the CBI.

2. The petitioner is apprehending his arrest in connection with RC No. 12/S/18, giving rise to Spl. Case No. 08 of 2023 arising out of Kotwali (Bhagalpur) P.S. Case No. 650 of 2017, F.I.R. dated 16.08.2018 for the offences punishable under Sections 120-B, 409, 420 and 468 of Indian Penal Code as well as Section 13 (2) r/w 13(1) (c) and (d) of the Prevention of Corruption Act 1988.

3. According to prosecution case, the petitioner has illegally withdrawn Rs. 4,00,000/- from the account of



SMVSSL.

4. Learned counsel for the petitioner submits that petitioner has clean antecedent and he has falsely been implicated in the present case. He further submits that the petitioner is not named in the F.I.R., and after five years of the institution of the present F.I.R., the petitioner is implicated in the present case by mentioning his name in Paragraph No. XVII and XVIII at Page 34 and 35 of the supplementary charge sheet alleging therein that the petitioner withdraw two cheques bearing No. 482498 dated 18.12.2001 and Cheque bearing No. 252334 of 19.06.2009 each amounting Rs. 2,00,000/- issued in the name of his wife Saroj Devi and his late daughter Pinki Tiwari from the account of SMVSSL. He further submits that during the course of investigation, CBI has submitted first charge-sheet on 30.12.2019 wherein three persons namely, Nabin Kaunr Saha, Sant Kumar Sinha and Sarita Jha have been chargesheeted. It appears from the supplementary charge sheet dated 28.06.2023, the allegation against the petitioner is that he has withdraw two cheques which was issued in favour of his wife and his daughter. Petitioner is a retired employee from the post of Nazir and maintained unblemished service record during the entire tenure of his service. And the petitioner is not a



beneficiary in the entire happenings as during the course of investigation, the investigating agency has not found any amount/property excess to the known sources of the petitioner. And the CBI after investigation has filed the supplementary charge sheet against the petitioner after completion of investigation and since the case is based upon the documentary evidence, therefore the custody of the petitioner may not be required.

5. Learned counsel for the petitioner has produced a judgment passed in SLP(Criminal) No. 376 of 2023 (Mahdoo Bava Vs Central Bureau of Investigation) the Hon'ble Apex Court vide his Judgment dated 20.03.2023 has hold that in those cases where the presence of the accused is not required for the investigation, there is no necessity of their arrest. The relevant portion is quoted as under:-

On the strength of the aforesaid allegations, which are certainly serious in nature, the prayer of the appellants for anticipatory bail is opposed vehemently by the learned Additional Solicitor General. But in our considered view there are at least three factors which tilt the balance in favour of the appellants herein They are:-

(i) Admittedly, the CBI did not require the custodial interrogation of the appellants during the period of investigation from 29.06.2019 (date of filing of FIR) till 31.12.2021 (date of filing of the final report). Therefore, it is difficult to accept the contention that at this stage the custody of the appellants may be required;

(ii) In the reply/counter filed



before the High Court, the CBI had taken a categorical stand that the Court had merely issued summons and not warrant for the appearance of the accused. In the case of Shri Deepak Gupta, CBI had taken a stand before the Special Court that “the presence of the accused is not required for the investigation but it is certainly required for trial” and that therefore he needs to be present. Therefore, all that the CBI wanted was the presence of the accused before the Trial Court to face trial. In such circumstances, to oppose the anticipatory bail request at this stage may not be proper; and

(iii) All transactions out of which the complaint had arisen, seem to have taken place during the period 2009-2010 to 2012-2013 and all are borne out by records. When the primary focus is on documentary evidence, we fail to understand as to why the appellants should now be arrested.

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 a 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 5 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.

11. In the case of the prime accused, namely Shri Mahdoo Bava, an additional argument advanced by the learned Additional Solicitor General is that he was involved in eleven other cases. But the tabulation of those eleven cases would show that seven out of those eleven cases are complaints under Section 138 of the Negotiable Instruments Act, 1881 and three out of those seven cases are actually inter-parties and not at the instance of the Bank. The eighth case is a complaint filed by the Income Tax Officer and it relates to the non-



payment of T.D.S. amount. The remaining three cases are the cases filed by CBI, one of which is the subject matter out of which the above appeals arise.

12. In view of the aforesaid, we are of the considered view that the appellants are entitled to be released on bail, in the event of the Court choosing to remand them to custody, when they appear in response to the summoning order. Therefore, the appeals are allowed and the appellants are directed to be released on bail, in the event of their arrest, subject to such terms and conditions as may be imposed by the 6 Special Court, including the condition for the surrender of the passport, if any. Pending application(s), if any, stands disposed of accordingly.

6. He further submits that the *modus operandi* of the entire srijan cases as alleged is almost the same and allegation against the government officials is of non-discharge their duties and according doubted their involvement by entering into conspiracy with the same and this Court in several matters have allowed anticipatory bail to the co-accused persons who are government servant/ retired employee on the ground that after submission of charge sheet their custody may not be required He further submits that the co-accused person, namely, Karra Parasu Ramaiah has been granted anticipatory bail by a Co-ordinate Bench of this Court vide order dated 12.05.2023 passed in Cr. Misc. No. 1544 of 2023 and another co-accused, namely, Mritunajoy Prasad Singh has been granted anticipatory bail by a Co-ordinate Bench of this Court vide order dated 10.11.2022



passed in Cr. Misc. No. 64325 of 2021. He further submits that there is no specific involvement of the petitioner in defalcation of the public fund and petitioner is not the beneficiary of any amount in the present case and the allegation against the petitioner that he has only withdraw the cheques which was issued in favour of his wife and his late daughter.

7. Mr. Avanish Kumar Singh, learned Spl.P.P. for the Central Bureau of Investigation has vehemently opposed the prayer for bail of the petitioner and submits that a supplementary charge sheet was filed against the petitioner on 28.06.2023 and during the investigation it has been revealed that the petitioner the then Nazir of Sahkund Block withdraw Rs. 2,00,000/- in cash on 08.12.2008 from the account of Srijan Mahila Vikash Sahyog Samiti Limited through Cheque No. 482498 and again he has withdrawn Rs. 2,00,000 on 26.02.2009 from the account of Srijan Mahila Vikash Sahyog Samiti Limited through Cheque No 252334 dated 19.06.2009 by signing on back of the said cheques and he recognized his signature on the back of the cheques.

6. Having heard learned counsel for the parties, perused the records and considering the aforesaid judgment in the case of Mahdoo Bava Vs Central Bureau of Investigation



where it is categorically stated that the petitioner is apprehending his arrest, let the petitioner, above named, in the event of arrest or surrender before the court below within a period of thirty days from the date of receipt of the order, be released on bail on furnishing bail bond of Rs. 25,000/- (Twenty-five Thousand) with two sureties of the like amount each to the satisfaction of the learned Special Judge, CBI-II, Patna in connection with RC No. 12/S/18, giving rise to Spl. Case No. 08 of 2023 arising out of Kotwali (Bhagalpur) P.S. Case No. 650 of 2017, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other following conditions:-

i. Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the court and shall remain physically present as directed by the court and on his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

ii. If the petitioner tampers with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

iii. And further condition that the court below shall verify the criminal antecedent of the petitioner and in case at



any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajesh Kumar Verma, J)

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