IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9125 of 2024

Arising Out of PS. Case No.-7 Year-2018 Thana- C.B.I CASE District- Patna

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Rajni Priya, aged about 44 years, Genera-Female, W/o Late Amit Kumar, R/o 103, Brahman Tola, Sabaur, Vill - Sabaur, Anchal - Sabaur, Bhagalpur, Bihar.

... ... Petitioner

Versus

The State through Central Bureau of Investigation, Bihar

... ... Opposite Party

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Appearance :

For the Petitioner	:	Mr. Avinash Kumar, Advocate
For the Opposite Party	:	Mrs. Nivedita Nirvikar, Senior Advocate (SC, CBI) and Mr. Pravin Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

18 25-10-2024 Heard learned counsel for the petitioner and learned senior counsel for the Central Bureau of Investigation.

2. The petitioner seeks bail in connection with R.C. Case No. 07 (A) of 2018, corresponding to Special Case No. 04 of 2020 registered for the offences punishable under Sections 409, 420, 467, 468, 471/34, 120B of the I.P.C. and Sections 13(2), 13(1)(c) and (d) of the Prevention of Corruption Act, 1988.

3. The prosecution story, in brief, is that initially the present case was registered as Bhagalpur Kotwali P.S. Case No. 545 of 2017 in the district of Bhagalpur (Tilkamanjhi) on 22.08.2017 in relation to illegal transfer and misuse of funds from the Government Bank Accounts in Bhagalpur and Banka

by Shri Apporva Kumar Madhukar, Accounts Administration & Self-Employment, O/o District Rural Development Agency, Bhagalpur, Bihar, for the offences punishable registered under Sections 409, 419, 420, 467, 468, 471 and 120B read with Section 34 of the I.P.C., but subsequently due to the preliminary investigation showing high handedness of the higher officials working under the State Government in different capacities, the Government of Bihar, has handed over the investigation to the C.B.I. through its Home Department vide Notification as contained in Memo No. 8/CBI-80-05/2017 HP-6888/Patna dated 24.08.2017 and its subsequent corrigendum as contained in Memo No. 8/CBI-80-05/2017 HP-3253/Patna dated 17.04.2018 whereby invoking the power under Section 6 of Delhi Special Police Establishment Act, 1946 extending the powers and jurisdiction of the members of Delhi Special Police Establishment to the whole of the State of Bihar for investigation of the aforesaid case and accordingly, the same was numbered as Special Case No. 04 of 2020, arising out of R.C. Case No. 07(A) of 2018.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. It is submitted that from perusal of the F.I.R. itself, it

appears that on the basis of the report of the three men committee as contained in Memo No. 2372 dated 09.08.2017, huge embezzlement of government funds kept in Bank of Baroda having Account Nos. 10010100012588 and 10010100003622 and in Indian Bank having Account No. 548672141 was unearthed amounting to crores. It has also been stated that the accounts of the District Nazarat were audited by the Accountant General, Bihar, in the year 2015 and it was reported that no any irregularities were found during the said audit. Hence, the present case was lodged against the bank officials and the office bearers of 'Srijan Mahila Vikas Sahyog Samiti Limited' (hereinafter referred to as 'SMVSSL'). It is further submitted that after lodging of the F.I.R., investigation was being carried out by the local police while the State Government has handed over the investigation to the C.B.I. and accordingly, the C.B.I. after reallocating new F.I.R. number, investigated the case and submitted police report in which the petitioner is not named in the F.I.R. but she has also been maliciously implicated as she was the Secretary of the said 'SMVSSL' which was incorporated alongwith other persons who were working under the State Government and other private individuals in different capacities as well as office bearer of the respective bank including the informant at whose instance the present case was registered initially. The only allegation against her is that she returned some amount through four cheques in the Account No. 7651(Old)/548672141 of the District Magistrate, Bhagalpur between 18.02.2017 to 29.03.2017. It is further submitted that she was married in the year 2009 and before lodging of the F.I.R., she and her family members had no knowledge that as to what was going between 'SMVSSL' and the District Officials. The allegation is that Rs. 84,30,00,000/- was credited in the account of 'SMVSSL' on different dates and out of the said amount, returning total amount of Rs. 71,42,34,000/- cannot be fastened on the petitioner because the prosecution has not been able to show as to how the petitioner could have control over the accounts of two government offices which is under the direct control of the District Administration under the State Government, which was aimed to be utilized for the purpose of allocation of fund for its distribution and payment against the development work. It is true that after death of her mother-in-law, Late Manorama Devi on 13.02.2017, being the Secretary of the said 'SMVSSL', she took over the charge of the Secretary of 'SMVSSL' through special proceeding convened by the District Officials wherein she was not present and only signed the Register which was brought to her matrimonial home. The procedure of her appointment as Secretary of the Samiti was carried out in such haste that even she could not understand as to why the District Administration was so much interested in the affairs of 'SMVSSL'. It is further submitted that this very inquisitiveness in the mind of the petitioner made her ask from the District Officials and others as to why even before the last rites of Late Manorama Devi, the District Administration in so much focused and confined to the affairs of Samiti and upon such query made by the petitioner and resistance being shown, she was made available with certain documents to satisfy her and in course of which, she was handed over one letter of the year 2003 by which the then District Magistrate had decided to transfer the entire development funds of the State Government in the account of 'SMVSSL' by opening a separate account in different banks. It was further apprised that the payments as against the development works were supposed to be released as and when required, on the basis of requisition being made by different offices in whose name the account was being maintained in respective banks. The petitioner immediately after being elected as Secretary of 'SMVSSL' was asked to sign good number of blank cheques of different banks, the details of which, at present, the petitioner is not able to recall because of the state of her mind during the period was such that she could not keep the details of those cheques as immediately thereafter they had to proceed for carrying out the last rites of her mother-in-law, Late Manorama Devi, in presence of all other family members and relatives. The allegation of frequent transfer of funds from the account of 'SMVSSL' to the account of District Magistrate through cheques, were manipulated at the ends of the District Official/Bank Officials, as per their requirements and the petitioner had no role in such frequent transfer because of the fact that over such cheques only her signature were obtained and entries of such cheques were never allowed to be filled-up and therefore, admittedly, the suitability of presenting those cheques were under the controls and sweet will of the officer who had procured and presented the same in the respective bank and therefore, the allegation of frequent transfer of fund cannot be fastened on the petitioner. The occasion to sign such cheques could only arise in the backdrop of the fact that it is the decision of the District Administration to park the entire development funds in the account of 'SMVSSL' to call upon the office bearers to sign such cheques for the purpose of regulating the funds as per the requirements and instruction issued by the competent authority in the district. It is further submitted that from perusal of the police report, it cannot be ruled out that it is the decision of the District Administration which resulted into transfer of government funds in the account of 'SMVSSL' and after such decision was taken at the level of the District Administration through the District Magistrate who being the Chief Revenue Officer of the district, no liability could either be fastened on the petitioner as well as other officials of the 'SMVSSL' because it is not the case of prosecution that any requisition of any kind was ever made by the Samiti to transfer such amount in the account of 'SMVSSL' for carrying out the development work in the district, as it was very much in the knowledge of the District Administration that the Samiti was not capable of undertaking entire development work in the district through its work for and therefore, all such transfer of government fund in the account of 'SMVSSL' maintained with the nationalized bank, was out and out an individual decision of the District Administration for their purpose/oblique motive and the petitioner neither as the Director nor in the capacity of the Secretary of the 'SMVSSL' could have ever found herself so efficient in her approximately five months tenure commencing

February, 2016 till lodging of the F.I.R. influence and mobilize the government fund for its misappropriation. It is relevant to mention here that during the course of investigation, the signature of various government officials including the signature of the District Magistrate, which is said to have been forged, for the purpose of effecting transfers of funds from one account to another, therefore, the possibility of the petitioner's signature being forged by the conspirator who were at the helms of affairs, to transfer fund from 'SMVSSL' cannot be ruled out and therefore, the role of bank official in whose control and supervision this entire fund were lying, would be most responsible for such alleged illegal transfer. Simply finding that cheques filled and presented including the vouchers being utilized for the purpose of frequent transfer cannot be solitary ground for prosecution. Legal Evidence with strong and convincing material which goes to show that there was no active participation of the petitioner, either in the capacity of the Director or as the Secretary. The petitioner has served as the Secretary only for five months and therefore, the prosecution has not been able to show any act of misrepresentation, cheating being done or forged document being prepared by the petitioner for the purpose of misappropriating the government fund whereas the prosecution has been able to charge sheet several government officials and therefore, the false allegation and complicity being show in the complaint apparently goes to show that it is the government official at whose instance fraudulent transfer were being done for their own benefits and the account of SMVSSL was personally being utilized for those ill motive which the government official had conspired amongst themselves by taking into confidence the office bearers of the concerned bank and it is not the case of the prosecution that at any point of time any effort whatsoever was ever made by the petitioner to conspire with any official and take them into confidence for being benefited in any manner. No transfer voucher for ensuring fund transfer as per allegation was ever made by the petitioner either in the capacity of the Director or in the capacity of the Secretary and therefore, the entire allegation which is levelled in the charge sheet is fabricated and is made in order to protect the government officials. It is further submitted that even if the averments made in the F.I.R./charge-sheet are taken on their face, they do not constitute the basic ingredients necessary for the offence under Section 420 of the I.P.C. *qua* the petitioner. Learned counsel for the petitioner has further relied upon the case of (***Prof. R.K. Vijayasarathy V. Sudha***

Seetharam MANU/SC/0213/2019: (2019)16 SCC 739 wherein the Hon'ble Apex Court has held that cheating is an essential ingredient for an act to constitute offence under Section 420 of the I.P.C. It is further submitted that from perusal of the charge sheet, it cannot be said that the averments and allegations made therein against the petitioner constitute an offence under Sections 409, 420, 467, 468 and 471 of the I.P.C. It is also relevant to mention here that at the time of lodging of the F.I.Rs., the petitioner's family was out of station and her husband fearing threat to life of his family, kept his family away from the place of occurrence. Later on, after few weeks, her husband complained of uneasiness and chest pain and was under treatment for the same. In the month of August, 2019, the petitioner had to immediately rush for medical check-up once again wherein he was admitted and the petitioner was advised by the doctors to keep her husband free from any tension and aggression but ultimately another attack was complained and her husband started vomiting and became unconscious after which he was taken to the hospital and admitted and on the next day of such admission in the said hospital the doctor declared him dead and accordingly, the petitioner was left with no option but to undertake the recourse of last rites of her husband, which was done by her alone. Therefore, being the only left parent of her child, and the pandemic period was also one of the reasons for the delay but now the petitioner being the sole parent of her child is before the Court of the law. Learned counsel for the petitioner has further relied upon the case of (***Niranjan Singh & Another Vs. Prabhakar Rajaram Kharote & Ors)***, reported in ***1980 (2) SCC 559***, in which the Hon'ble Supreme Court in catena of cases has held that a detailed elaboration of evidence at the stage of bail has to be avoided. This is neither in the interest of the prosecution nor the accused. He has further relied upon the case of (***Teesta Atul Setalvad Vs. State of Gujrat)***, reported in ***2023 SCC Online SC 860.*** It is further submitted that the petitioner is the only parent left to take care of her child aged about 14 years, who has already suffered a lot due to the mental agony which the family has undergone in the last few years and his son also requires to recommence his school education for which her presence would evidently be required. In the light of the facts and circumstances stated herein above, it is respectfully submitted that the prosecution case has been brought for unnecessary harassment to the petitioner and her other family members for which a protection is required to be granted to meet the ends of justice. The petitioner is a respectable person having sufficient stake in society and there is no chance of absconding or tampering with the prosecution evidence. The petitioner is ready to co-operate with the Investigating Officer in investigation. The petitioner is a lady. The petitioner has 12 criminal antecedents as stated in paragraph no. 3 of the supplementary affidavit filed on behalf of the petitioner. It is further submitted that out of 12 cases in ten cases, the petitioner has already been granted bail. It is further submitted that several other co-accused persons have already been granted bail by different Co-ordinate Benches of this Court i.e., Praveen Kumar, vide Cr. Misc. No. 38626 of 2020 under order dated 13.04.2021, Pradyut Kumar Biswas @ P.K. Biswas @ Vishwas, vide Cr. Misc. No. 8635 of 2021 under order dated 13.08.2021, Amrendra Kumar Yadav, vide Cr. Misc. No. 24846 of 2021 under order dated 26.08.2021, Barun Kumar, vide Cr. Misc. No. 35068 of 2021 under order dated 04.10.2021, Deo Shankar Mishra, vide Cr. Misc. No. 33112 of 2021 under order dated 01.12.2021, Sarita Jha, vide Cr. Misc. No. 35301 of 2021 under order dated 03.12.2021, Ram Krishna Jha @ R.K. Jha, vide Cr. Misc. No. 18953 of 2021 under order dated 18.01.2022, Ajay Kumar Pandey, vide Cr. Misc. No. 44285 of 2021 under order dated 19.01.2022, Sant Kumar Sinha, vide Cr. Misc. No.

46331 of 2021 under order dated 03.03.2022, Tapan Kumar Roy @ Tapan Roy, vide Cr. Misc. No. 46486 of 2021 under order dated 19.09.2022, Dinkar Tigga, vide Cr. Misc. No. 29041 of 2022 with Naluparayil Anand Varghess @ N.V.Ruju, vide Cr. Misc. No. 28957 of 2022 with Hare Krishna Adak, vide Cr. Misc. No. 30227 of 2022 under order dated 02.03.2023, Md. Ezam Ahmad Ansari, vide Cr. Misc. No. 71097 of 2021 under order dated 27.03.2023, Sujeet Kumar Srivastava @ Sujeet Kumar Shrivastava, vide Cr. Misc. No. 17174 of 2022 under order dated 27.03.2023, Ananda Chandra Ghadai @ Anand Chandra Ghadai, vide Cr. Misc. No. 15217 of 2023 under order dated 15.05.2023, Prem Kumar Sinha, vide Cr. Misc. No. 9919 of 2023 under order dated 19.07.2023, Shankar Prasad Das @ Sankar Prasad Das, vide Cr. Misc. No. 17308 of 2023 under order dated 19.07.2023, Sumit Kumar, Vide Cr. Misc. No. 73701 of 2022 under order dated 24.07.2023, Arun Kumar, vide Cr. Misc. No. 17204 of 2023 under order dated 25.07.2023, Navin Kumar Saha @ Nabin Kumar Saha, vide Cr. Misc. No. 61760 of 2021 with Bipin Kumar @ Bipin Kumar Sharma, vide Cr. Misc. No. 13793 of 2022 under order dated 11.08.2022 and Sanjeev Kumar, vide Cr. Misc. No. 29840 of 2023 under order dated 20.09.2023, annexed as Annexure-P/2 series to the supplementary affidavit filed on behalf of the petitioner. The petitioner is in custody since 11.08.2023 and thereafter she was taken on police remand for further investigation in the matter and on completion of investigation and personal interrogation she has again been sent back to judicial custody.

5. Learned senior counsel for the C.B.I. has vehemently opposed the bail petition of the petitioner and by filing of a counter affidavit on behalf of the C.B.I submitted that the officials of Srijan Mahila Vikas Sahyog Samiti Limited (hereinafter referred to as 'SMVSSL') in criminal conspiracy with the officials of Bank of Baroda and Indian Bank, Bhagalpur, for diversion of the government funds to the accounts of 'SMVSSL' by using 36 Pay Orders/Bank Drafts issued by different banks in favour of D.R.D.A., Bhagalpur and the bank officials in connivance with 'SMVSSL' fraudulently deposited the funds to the accounts of 'SMVSSL' from the accounts of D.R.D.A., by using cheques, having forged signatures of the officials of D.R.D.A. Thereafter the officials of 'SMVSSL' and bank authorities deposited amounts back in different accounts of D.R.D.A. to cover up the frauds. It is further submitted that the petitioner was made the Secretary of 'SMVSSL' for six months after death of her mother-in-law,

namely, Late Manorama Devi, the then Secretary of the 'SMVSSL' and she was fully aware of illegal diversions of the government funds. It is further submitted that during the course of investigation, it also revealed that the insurance premiums of the petitioner and her husband were paid from the bank account of said 'SMVSSL' in which D.D.C. funds were diverted and deposited. The payment was also made from the 'SMVSSL' account for booking of shop in Ist Mall at Bhagalpur in the name of her husband which was also diverted fund of D.D.C. After completion of investigation, C.B.I. has filed charge sheet against 27 accused persons including the petitioner for the offences punishable under Sections 120B, 409, 420, 467, 468, 471 of the I.P.C. and Sections 13(2), 13(1)(c) and (d) of the P.C. Act. She did not join the investigation and remained absconding. Learned counsel for the C.B.I. has also relied upon the case of (***Kehar Singh & Ors. Vs. State***) reported in ***AIR 1983 SC 1988***. It is true that the several co-accused persons have already been granted bail by different Co-ordinate Benches of this Hon'ble Court but the cases of other co-accused persons who have been granted bail by this Hon'ble Court are different from the case of the petitioner. Learned counsel for the C.B.I. has further relied upon the case of (***Dipak Subhashchandra***

Mehta Vs. Central Bureau of Investigation) reported in ***AIR 2012 SC 949***. It is further submitted that after taking cognizance, learned trial court had issued summon to the petitioner for her appearance in person before the learned trial court for facing trial of the case but neither she made any prayer intimating reasons for her non-appearance nor she appeared before the learned trial court, thereafter, bailable warrant has been issued against her but she did not appear before the learned trial court. Thereafter non-bailable warrant has been issued against her on 29.08.2022, thereafter, the learned trial court has declared her proclaimed offender and permanent warrant of arrest was issued against her on 14.03.2023 in RC Case No. 14(A)2017. The petitioner did not join the investigation and evading herself from investigation alongwith her husband and minor child and remained absconding till her arrest in Case No. 14(A)2017. She admitted that her husband was in hospital in Delhi in the name of the Sandeep Kumar although the real name of her husband was Amit Kumar as they were trying to hide their identities and after death of her husband, namely, Amit Kumar on 26.08.2019, an application was filed by the petitioner on 27.08.2019 in the said hospital for correction in the name of patient from Sandeep Kumar to Amit Kumar. She visited

Durgapur and Kolkata, and stayed at different locations at Ghaziabad for hiding herself. In compliance to the arrest warrant and after making several sincere and earnest efforts, she was arrested by the C.B.I. from Flat No. MS-12, Ved Enclave-69, Rajendra Nagar, Sahibabad, Ghaziabad, U.P. on 10.08.2023. Lastly, she submits that in view of the facts and circumstances as stated above, the bail application of the petitioner is devoid of merit and is not sustainable in law and may kindly be rejected.

6. Considering the aforesaid facts and circumstances of the case as well as the period of custody and the petitioner being a lady, let the above named petitioner, be enlarged on bail on furnishing bail bond of Rs. 20,000/- (Rupees Twenty Thousand) with two sureties of the like amount each to the satisfaction of the learned Special Judge, CBI-II at Patna, in connection with R.C. Case No. 07 (A)/2018, corresponding to Special Case No. 04 of 2020.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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