

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41496 of 2019**

Arising Out of PS. Case No.-17 Year-2017 Thana- C.B.I CASE District- Patna

Prabhat Kumar Sinha, Son of Late Dr. Jagannath Sinha Resident at Nalanda Colony, Khajpura, P.S.- Rajivnagar, Distt - Patna.

... .. Petitioner/s

Versus

Union of India through Director, Central Bureau of Investigation, New Delhi.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Y.V. Giri, Sr. Adv.
Mr.Rajni Kant Jha, Adv.
For the Opposite Party/s : Mr.Bipin Kumar Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 16-06-2020

Apprehending arrest in connection with Special Case No. 04/2018/ RC Case No. 17(A)/2017 registered by the Central Bureau of Investigation (CBI) for the offence punishable under Sections 120-B, 409, 420, 467, 468 , 471 and 477-A of the Indian Penal Code and Sections 13(2), 13(i)(d) of Prevention of Corruption Act, 1988, the petitioner has filed the present application under Section 438 of the Cr.P.C. for grant of anticipatory bail.

2. The case arises out of infamous Srijan Scam in relation to plundering of hundreds of crores of public money in the district of Bhagalpur. The present FIR is one arising out of many registered in relation to the said scam.



3. This is an admitted fact that the petitioner had functioned as Incharge DDC-cum-CEO, Zila Parishad, Bhagalpur from 28.12.2012 to 16.04.2013. The petitioner has been charge-sheeted by the CBI. A copy of the charge-sheet has been brought on record, from which it transpires that DDC-cum-CEO, Zila Parishad, Bhagalpur had received a grant of Rs.8,79,06,070=00 for Zila Parishads, Panchayat Samities and Gram Panchayats for implementation of 13th Finance Commission Scheme. The entries of receipt of the said amount made in the allotment register of Zila Parishad office were signed by the petitioner. Subsequently, the petitioner had issued a PL cheque on 16.03.2013, which was sent to the Treasury Office, Bhagalpur for remitting the amount in the account of DDC-cum-CEO at Indian Bank, Bhagalpur Main Branch. Noticeably, on 16.03.2013, the PL cheque was issued to the treasury for remitting the amount in the account of DDC-cum-CEO at Indian Bank, Main Branch, Bhagalpur, albeit the DDC-cum-CEO did not have any account in respect of 13th Finance Commission Scheme at Indian Bank, Bhagalpur on that date. Subsequently, an account was opened in the Indian Bank, Main Branch, Bhagalpur on 23.03.2013. It is accordingly the case of the prosecution that the request made by the petitioner on 16.03.2013 for issuing banker's cheque in favour of the Branch Manager,



Indian Bank, Bhagalpur was made with an intent to commit fraud with the funds of 13th Finance Commission. It further transpires that a banker's cheque was issued on 19.03.2013 for a sum of Rs. 8,79,06,070=00 in favour of Branch Manager, Indian Bank, Bhagalpur Main Branch, which was collected by co-accused Rakesh Kumar.

4. According to the charge-sheet, it has come to light that as a part of criminal conspiracy with the petitioner, Smt. Manorma Devi and the officers of the Indian Bank, Bhagalpur, said Rakesh Kumar handed over the said banker's cheque to Manorma Devi. Manorma Devi, in furtherance of the said criminal conspiracy prepared a false pay-in-slip for fraudulently crediting the proceeds of the said banker's cheque into a different account i.e. Account No. 822726120 maintained in the name of Srijan Mahila Vikas Sahyog Samiti Limited (SMVSSL). Further, the petitioner as DDC-cum-CEO received grant of Rs. 88,95,021=00 and 6,32,88,640=00 for Zila Parishads, Gram Panchayats and Panchayat Samities in the month of March 2013. In similar manner, the entries in respect of the said amount in the allotment register of Zila Parishad were signed by the petitioner in token of their correctness. He again issued a PL cheque on 25.03.2013 for a sum of Rs. 7,21,83,681=00 (88,95,021=00 + 6,32,00,841=00) for



issuance of banker's cheque. After the bills were passed by the treasury officer, PL cheque and the bank application were presented at State Bank of India, Main Branch, Bhagalpur. Accordingly, banker's cheque was issued for the said amount in faovur of Branch Manager, Indian Bank, Bhagalpur. In respect of the said amount also, it is the case of the CBI in the charge-sheet that as a part of criminal conspiracy with Manorma Devi, the Secretary of SMVSSL instead of depositing the proceeds of the said banker's cheque in the account of DDC-cum-CEO, handed over the same to another co-accused representing the cooperative society, which was deposited in the account of SMVSSL.

5. This is to be noted that initially the FIR was registered with Kotwali Police Station, Bhagalpur based on written statement of the Incharge Additional Chief Executive Officer, Zila Parishad, Bhagalpur. A report submitted by Inquiry Committee dated 10.08.2017 was apparently the basis for lodging of the FIR, which was registered as Kotwali P.S. Case No. 513 of 2017. The Investigation of the case was, subsequently, handed over to the CBI and accordingly the case has been re-registered as Special Case No. 4/2018/ RC Case No. 17(A)/ 2017.

6. On perusal of the charge-sheet, which has been brought on record by way of Annexure to the supplementary



affidavit filed on behalf of the petitioner, it appears that one Manorma Devi, the Secretary of SMVSSL had played a key role in the entire scam. In response to a query made by this Court as to whether said Manorma Devi has been charge-sheeted or not, Mr. Bipin Kumar Sinha, learned counsel for the CBI has informed this Court that she died on 14.02.2017. In a proceeding under Section 438 of the Cr.P.C. the Court need not examine as to whether this mammoth scam could be unearthed only after the person at the center of the scheme passed away since she had been capable of maintaining a shield over the entire operation, or her death soon before the illegal transactions surfaced suggest suspicious circumstances in which she died. This is an aspect which can be gone into by the CBI. It is purely in the domain of the Investigating Agencies to investigate a criminal case in a particular manner in accordance with law. This Court should not and need not issue any such direction in the present proceeding. The CBI may, however, examine this angle of the case.

7. Mr. Y.V. Giri, learned Senior Counsel appearing on behalf of the petitioner has taken me to Annexure-1 which is the FIR to submit that the date of occurrence has been described as 12.06.2013 onwards whereas the petitioner's tenure as DDC-cum-CEO, Zila Parishad, Bhagalpur had come to an end much before



on 16.04.2013. He has secondly submitted that if any diversion of the amount received by the petitioner was done by getting the same deposited in the account of SMVSSL, the same must have been done by and at the behest of the bank officials, inasmuch as, there is no direct evidence to support that the petitioner played an active role in getting the said total amount of Rs. 16,00,89,751=00 deposited in the account of SMVSSL. He has further argued that there are identical materials against the petitioner's successor Dr. Chandra Shekhar Singh against whom the CBI has not submitted charge-sheet. He has thirdly submitted that the petitioner has since retired from service and there is no evidence of acquisition by him of assets disproportionate to his all known sources of income. He has submitted, thus, that had the petitioner plundered the State exchequer of such magnitude, the Investigating Agency could have detected the disproportionate assets acquired by the petitioner. He has relied on a Supreme Court's decision in case of *P. Chidambaram vs. Directorate of Enforcement* reported in *2020(1) BLJ(SC) 200*, to submit that a case for grant of anticipatory bail, in the facts and circumstances of the case is made out.

8. Mr. Bipin Kumar Sinha, learned counsel for the CBI has vehemently opposed the prayer for bail and has submitted that



the materials collected during course of the investigation disclose specific role played by the petitioner, who in connivance with other persons has misappropriated the huge public money. He has next submitted that co-accused Rakesh Kumar, who was working under the petitioner, has been denied regular bail by this Court by an order dated 07.08.2018, passed in Cr. Misc. No. 34601 of 2018. He has referred to another order dated 02.05.2019, passed in Cr. Misc. No. 14492 of 2019 whereby another co-accused Sant Kumar Sinha, an employee of the Bank, has been refused anticipatory bail. According to him, scam of this magnitude could not have happened without active role played by the petitioner or at least his tacit support in his capacity as DDC-cum-CEO, Zila Parishad, Bhagalpur. He has contended that there is chance of the petitioner tampering with the evidence and influencing witnesses, if he is allowed anticipatory bail, in view of seriousness of the offence and magnitude of the crime. He has further submitted that process has been issued under Section 82 of the Cr.P.C. for appearance of the petitioner before the court below and for the said reason also, this application seeking anticipatory bail should not be entertained.

9. I reject, at the very threshold, the submission made on behalf of the petitioner that since the petitioner demitted his office on 16.04.2013 whereas the date of occurrence has been shown to



be 12.06.2013 onwards and, therefore, no offence can be said to be made out against him; for the reason that the facts alleged in the FIR as well as those disclosed in the charge-sheet demonstrate that it was during the petitioner's tenure as DDC-cum-CEO, Zila Parishad, Bhagalpur that the amount of Rs. 16,00,89,751=00 was received for being deposited in the account maintained for execution of 13th Finance Scheme. The amount was not deposited in the account of the DDC-cum-CEO, Zila Parishad, Bhagalpur and was in fact deposited in the account of SMVSSL, instead. The request was made to the Treasury Officer by the petitioner for issuance of banker's cheque on 16.03.2013 in favour of Branch Manager, Indian Bank, Bhagalpur but till that date no account with the Indian Bank was opened, and was opened subsequently on 23.03.2013. No amount received by the petitioner under 13th Finance Scheme was deposited in the account opened for 13th Finance Scheme i.e. Account No. 6115136905 in the Indian Bank, Bhagalpur Branch. The conspiracy was so well knit, as is evident from the FIR and the charge-sheet that in case any cheque was issued for withdrawal of any amount from Account No. 6115136905 of the DDC-cum-CEO, amount from unknown sources used to be deposited in the said account so as to avoid a situation of dishonour of cheque.



10. In view of the aforesaid, Supreme Court's decision in case of **P. Chidambaram** (supra) does not come in aid of the petitioner. The Supreme Court in the said made significant observation in para 21 which reads as under :-

“21. Thus from cumulative perusal of the judgments cited on either side including the one rendered by the Constitution bench of this Court, it could be deduced that the basic jurisprudence relating to bail remains the same inasmuch as the grant of bail is the rule and refusal is the exception so as to ensure that the accused has the opportunity of securing fair trial. However, while considering the same the gravity of the offence is an aspect which is required to be kept in view by the Court. The gravity for the said purpose will have to be gathered from the facts and circumstances arising in each case. Keeping in view the consequences that would befall on the society in cases of financial irregularities, it has been held that even economic offences would fall under the category of “grave offence” and in such circumstance while considering the application for bail in such matters, the Court will have to deal with the same, being sensitive to the nature of allegation made against the accused. One of the circumstances to consider the gravity of the offence is also the term of sentence that is prescribed for the offence the accused is alleged to have committed. Such consideration with regard to the gravity of offence is a factor which is in addition to the triple test or the tripod test that would be normally applied. In that



regard what is also to be kept in perspective is that even if the allegation is one of grave economic offence, it is not a rule that bail should be denied in every case since there is no such bar created in the relevant enactment passed by the legislature nor does the bail jurisprudence provides so. Therefore, the underlining conclusion is that irrespective of the nature and gravity of charge, the precedent of another case alone will not be the basis for either grant or refusal of bail though it may have a bearing on principle. But ultimately the consideration will have to be on case to case basis on the facts involved therein and securing the presence of the accused to stand trial.”

11. The Supreme Court clearly held in case of **P. Chidambaram** (supra) that precedent of another case alone will not be the basis for grant or refusal of bail, though it may have a bearing on principle or consideration will have to be on case to case basis on the facts involved, the Supreme Court has noted.

12. In the background of the manner in which the scam of this magnitude has taken place, coupled with role allegedly played by the petitioner, chances of tampering with the evidence and influencing witnesses may be considerable.

13. Considering the aforesaid circumstance, in my opinion, this is not a fit case for grant of anticipatory bail. This application is accordingly dismissed.



14. However, petitioner is directed to surrender before the court below within four weeks from today and seek regular bail, if so advised.

(Chakradhari Sharan Singh, J)

Rajesh/-

| | |
|-------------------|-------------|
| AFR/NAFR | NAFR |
| CAV DATE | NA |
| Uploading Date | 18 .06.2020 |
| Transmission Date | 18.06.2020 |

