(2018) 08 PAT CK 0004

In the Patna High Court

Case No : Criminal Miscellaneous No.15986, 16262 of 2018

Hari Shankar Upadhyay Hari Shankar Upadhya APPELLANT

Vs

State Of Bihar & Anr RESPONDENT

Date of Decision : 02-08-2018

Acts Referred:

Indian Penal Code,1860 — Section 34, 120B, 409, 420, 467, 468, 471
Prevention of Corruption Act, 1988 — Section 13(1)(c)(d), 13(2)

Citation : (2018) 08 PAT CK 0004

Hon'ble Judges : BIRENDRA KUMAR, J

Bench : Single Bench

Advocate : Manan Kumar Mishra, Vishwajeet Kumar Mishra, Ajay Kumar Thakur, Avanindra Kumar Jha, Ranjan Kumar Jha, Purshottam Kumar Jha, Sanjay Kumar

Judgement

1. Heard learned counsel for the petitioners and learned counsel for the Central Bureau of Investigation.

2. The petitioners seek bail in a case registered for the offences punishable under Sections 120B/409/420/467/468/471/34 of the Indian Penal Code

and Section 13(2) read with Sections 13(1)(c) and 13(1)(d) of the Prevention of Corruption Act, 1988.

3. The present criminal prosecution is notoriously known in the State of Bihar as SRIJAN scandal of rupees thousands of crores. The FIR was lodged

by the successor Land Acquisition Officer alleging therein that compensation amount of land acquisition matter was deposited in different bank

accounts by the predecessor and the same were collusively and wrongly transferred to SRIJAN Mahila Vikas Sahyog Samiti and in turn SRIJAN

Mahila Vikas Sahyog Samiti transferred the amount in the bank account of the person involved in the conspiracy of misappropriation/defalcation.

4. The petitioners are not named in the FIR. Their involvement surfaced during investigation by the Central Bureau of Investigation as conspirators

and responsible person for dwindling of public money of Bhagalpur Central Cooperative Bank Limited, Bhagalpur. The petitioners were holding the

post of Manager Accounts and Managing Director respectively of the Bhagalpur Central Cooperative Bank Limited at the relevant time. The material

collected during investigation against the petitioners is that the petitioners had issued different cheques of crores of rupees to the Indian Bank along

with a request letter for depositing those money and opening of Simple Term Deposit account. However, the authorities of Indian Bank deposited

those money in the account of SRIJAN and the petitioners did not care till lodging of the FIR or investigation of the case as to what happened to the

crores of rupees of Bhagalpur Central Cooperative Bank Limited, Bhagalpur, which were sent for deposit in Simple Term Deposit account in the

Indian Bank.

5. During investigation, material was collected that the petitioners produced forged letter said to be issued by the Indian Bank, Bhagalpur Branch, to

the Bhagalpur Central Cooperative Bank Limited, showing that they would pay 10% yearly interest; whereas there was no such proposal from Indian

Bank. On the basis of that forged letter, the file was processed by Ved Prakash Upadhyay, an employee of Bhagalpur Central Cooperative Bank

Limited on the persuasion of the petitioners to facilitate sending the money to Indian Bank. This fact has come in the statement of Ved Prakash

Upadhyay before CBI. Further material was collected that the guidelines of the Reserve Bank of India as well as the Bye-laws of the Central

Cooperative Bank and resolution of the Board was not followed while opening of bank account on 01.12.2012 in the Indian Bank. Even the KYC

requirements were not fulfilled. After opening of the bank account, further money was sent in crores through cheques for deposit of the same in

sweep account. Even that money was transferred to the SRIJAN by Indian Bank Officials, who are also co-accused in this case.

6. Allegation is that an identical act has been committed by the petitioners by depositing money with Bank of Baroda. The aforesaid facts transpired

from the charge sheet submitted by the Central Bureau of Investigation and further investigation is still pending in the matter of other defalcations against the petitioners.

7. Learned counsel for the petitioners submits that there is no evidence collected by the Central Bureau of Investigation to substantiate that the

petitioners were part to the conspiracy alleged. The petitioners had simply sent cheques to be deposited in the Simple Term Deposit or sweep account.

If the authorities of Indian Bank made any interpolation, as alleged by Central Bureau of Investigation, on the cheques and diverted the fund to some

other account, it is not fault of the petitioners. The only negligence which can be alleged on the part of the petitioners is that they were not vigilant to

watch the status of their cheques sent to the Indian Bank for which they may be departmentally proceeded but there is no material to substantiate that

the petitioners in any way benefited from the transfer of the fund by the Indian Bank to the account of SRIJAN. Moreover, the petitioners are already

in custody for last one year and they are ready to cooperate with the trial. The allegation of conspiracy part is still unsubstantiated.

8. Learned counsel for the Central Bureau of Investigation opposed the prayer for bail on the ground that public money has been embezzled in a

conspiracy hatched by different stakeholders and the act committed has wide socio-economic impact. Moreover, the investigation relating to other

embezzlement by sending cheques to Bank of Baroda by the petitioners is still going on. In the event of release, the petitioners are likely to influence

the witnesses and tamper with the evidences. Submission is that there need not be necessarily the evidence of benefit from the conspiracy. However,

the evidence collected would support that such huge amounts were sent to the Indian Bank for deposit in particular account and the same were not

deposited. However, the petitioners being controller of the office, and expected to maintain a record of different deposits of Bhagalpur Central

Cooperative Bank Limited in different accounts were silent deliberately for the reason that they were the part of the conspiracy. It is mentioned in the

charge sheet that the current account of the BCCBL bearing 10010100013202 was opened in the Bank of Baroda by anti-dating it on 26.11.2012;

whereas the file for opening of the said account was processed on 28.11.2012 in the office of Bhagalpur Central Cooperative Bank Limited.

9. After hearing the parties and considering the materials produced on the record, the following facts emerges:

(i) Different cheques of crores of rupees were sent by the petitioners to Indian Bank to be deposited in STD and the money was not deposited rather

transferred to the account of SRIJAN and the petitioners kept silent to enquire about the status of such huge amount, is strong circumstance of

involvement of the petitioners in criminal conspiracy.

(ii) A forged letter said to be issued by Indian

Bank proposing payment of 10% interest was produced by the petitioners to Ved Prakash Upadhyay, an employee of the BCCBL and Ved Prakash

Upadhyay was asked to process the file on the basis of that letter for deposit of the matured amount in the State Bank of India to the Indian Bank to

get more benefit. This was deliberate act of the petitioners.

10. No money was ever deposited by Indian Bank in any account of Bhagalpur Central Cooperative Bank Limited and the petitioners were silent for

such a long time which cannot be said to be a case of mere negligence.

11. Therefore, considering the nature and seriousness of allegation against the petitioners, I am not inclined to enlarge the petitioners on bail. Hence,

the prayer for bail of the petitioners is refused.