

**IN THE HIGH COURT OF JHARKHAND AT RANCHI
B.A. No. 8427 of 2022**

Sanjay Kumar Tiwary @ Sanjay Kumar Tiwari @ Sanjay Tiwary ... Petitioner
Versus
The Union of India through C.B.I. Opp. Party

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Balaji Shrinivasan, Advocate
: Mr. Rajesh Kumar, Advocate.
For the Union of India : Mr. Prashant Pallav, A.S.G.I.

C.V.A. on 28.09.2022 : **Pronounced on 10.11.2022**

This bail application has been filed on behalf of the applicant– Sanjay Kumar Tiwary @ Sanjay Kumar Tiwari @ Sanjay Tiwary with prayer to release on bail in connection with R.C. No. 12 (A) /2017-R, registered under Sections 120B, 406,409,420 of the Indian Penal Code and Section 13(2) read with Section 13(1) (d) of P.C. Act, pending in the court of the Special Judge, C.B.I., Ranchi.

2. As per prosecution version, F.I.R. was lodged against four named accused including the applicant with these allegations that a Saving Bank Account No.33954815459 of "Jharkhand Rajya Madhayan Bhojan Pradhikaran Account" was maintained at State Bank of India, Hatia Branch, Ranchi. On 05.08.2017, State Bank of India, Hatia Branch had received six debit advices from Department of "Jharkhand Rajya Madhayan Bhojan Pradhikaran", Govt. of Jharkhand for transfer of Rs.120.31 crores from their Saving Bank Account to multiple accounts maintained with different Banks including State Bank of India. As per the advice, Rs. 20.29 crores was to be transferred to State Bank of India accounts and Rs. 100.01 crores was to be transferred to other Bank accounts. For bulk transfer through Real Time Gross Settlement/National Electronic Fund Transfer (RTGS/NEFT), Rs.100.01 crore was debited from Saving Bank Account of Jharkhand Rajya Madhayan Bhojan Pradhikaran and temporarily parked in office/suspense account of the Branch for processing of transfer through NEFT/RTGS to various accounts. Due to failure in uploading, the entire amount of Rs. 100.01 crores got returned to the office/Suspense Account of the Branch.

3. It is also further alleged that one Mr. Ajay Oraon, the then Deputy Manager (Business Development Department), State Bank of India, Hatia Branch, Ranchi instead of crediting back the amount of Rs. 100.01 crores to Saving Bank Account of Jharkhand Rajya Madhayan Bhojan Pradhikaran from office/suspense account of the Branch, with gross negligence and without applying due diligence dishonestly and by abusing his official position as a public servant, prepared, posted and authorized the transfer of almost entire amount of Rs. 100.01 crores to the Current Account No. 36310149578 of M/s Bhanu Construction and Mr. Sanjay Kumar Tiwari and Mr. Suresh Kumar both were partners of M/s Bhanu Construction who dishonestly transferred the said amount to their various accounts and utilized/misappropriated the same by keeping it as liquid

security/margin for the credit facility extended to them by Axis Bank Ltd., Ashok Nagar, Ranchi, H.D.F.C. Bank Ltd., Ashok Nagar Branch, SREI Equipment Finance Ltd., Ranchi, Cholamandalam Investment & Finance Co. Ltd., Ranchi.

4. It is further alleged that out of 100.01 crore, State Bank of India, Hatia Branch, Ranchi has managed to recover the amount of Rs.76,29,13,000/- till 20.11.2017 from the various account with different Banks and Rs.23,72,28,016/- could not be recovered from M/s Bhanu Construction resulting wrongful loss to the State Bank of India, Hatia Branch, Ranchi and corresponding wrongful gain to M/s Bhanu Construction. It was requested to all Banks to put a hold on such amount transferred to above accounts of M/s Bhanu Construction where funds have been siphoned off by the fraudster M/s Bhanu Construction. The amount so received by M/s Bhanu Construction Company was also utilized for purchase of the vehicle/equipments and creation of other assets and also landed assets with their associates, more particularly, Raju Kumar Verma. As such on the letter issued by Jasbir Singh, Asstt. General Manager, State Bank of India, Hatia addressed to the Superintendent of Police, A.C.B., C.B.I., Ranchi, this F.I.R. was lodged with the police station concerned.

5. Learned Counsel for the applicant has submitted that as per F.I.R. allegations it was Mr. Ajay Oraon the then Deputy Manager of State Bank of India, Hatia, Branch, Ranchi had transferred the amount of Rs. 100.01 crore from the Saving Bank Account of Jharkhand Rajya Madhayan Bhojan Pradhikaran to the account of M/s Bhanu Construction and by 20.11.2017 total sum of Rs. 76,29,13,000/- had been received by the Bank. Presently, only Rs. 16 crores is the remaining amount to be recovered from the account of the applicant but the same is impossible because Bank accounts of the applicant have been frozen after lodging of the F.I.R. The business of the applicant was crippled. A memorandum of understanding had taken place between the applicant and the complainant-Bank. The applicant is also unable to fulfil his contractual obligations as per M.O.U dated 07.07.2017. The applicant has also filed a complaint against Navadurga and Birat Chandra Dagra after the mail dated 21.09.2017 received from Bank. The applicant cannot return the remaining 16 crore because the Bank and C.B.I. have refused to cooperate him. As such he has become the victim of circumstance; while he was making best effort to transfer the remaining amount to the Bank. The applicant is also willing to make full and final settlement payment to the Bank but he cannot do so until the debit/credit facility of his bank accounts is restored for the limited purpose of payment of crediting the sale proceeds and automatically debiting the settlement amount. The applicant was never taken into custody during investigation. He was remanded in this case on 27.05.2022. The applicant is also innocent as he has no mala fide intention since inception.

6. The learned Counsel for the applicant in support of his submission relied on the following case laws:-

i. *Anresh Kumar vrs State of Bihar (2014) 8 SCC 273*

ii. ***Siddharth vrs. State of Uttar Pradesh 2021 SCC Online 615***

iii. ***Aman Preet Singh vrs. C.B.I. 2021 SCC Online SC 941***

iv. ***Satendra Kumar Antil vrs. CBI & Anr. 2022 SCC Online SC 825***

7. Learned Counsel for the Union of India A.S.G.I. vehemently opposed the contentions made by the learned Counsel for the applicant and contended that co-accused Mr. Ajay Oraon the then Deputy Manager, State Bank of India, Hatia Branch, Ranchi was very much aware about the Banking procedure and he fraudulently and by abusing his official position as public servant prepared posted and authorized voucher to transfer the said amount in the account of M/s Bhanu Construction Company. The applicant- Sanjay Kumar Tiwary had utilized the said amount for purchasing heavy commercial vehicles, repayment of his various outstanding loans/dues, payment of insurance premium etc. and also by keeping it as liquid security/margin for the credit facility obtained from Axis Bank Ltd., Ashok Nagar, Ranchi. He also withdrew a huge amount in cash and utilized/misappropriated the same for his personal purposes. Indeed, the applicant was in criminal conspiracy with the co-accused Ajay Oraon Deputy Manager, S.B.I., Hatia Branch, Ranchi and Raju Kumar Verma a private person in illegal transfer of Rs. 100.01 crore from the Saving account of Jharkhand Rajya Madhayan Bhojan Pradhikaran to his firm Bhanu Construction's account. There is active involvement of the applicant in commission of defalcation of Govt. fund by playing fraudulent practice in conspiracy of Ajay Oraon, Deputy Manager, S.B.I., Hatia Branch, Ranchi. If the applicant is enlarged on bail, he may influence the witnesses and also may flee from justice.

8. From the record it is evident that the applicant after transfer of the amount of Rs.100.01 crore by co-accused Ajay Oraon in the Account of M/s Bhanu Construction Company, the applicant being the authorized signatory of M/s Bhanu Construction was very much aware that the said amount had come in the account of Bhanu Construction Company as a result of conspiracy between Ajay Oraon and the Applicant himself. Rather the Applicant having become aware of the same fact had misappropriated the said amount in purchase of several heavy vehicles, purchase of land and utilized it for his personal use and also for his own firm Bhanu Construction Company. In the Bail Application he himself has admitted that a sum of Rs. 16 crore is left to be recovered by the Bank from the account of the firm Bhanu Construction Company. If he is enlarged on bail, he may flee from justice and also abscond as he has shown his inability to refund the said amount to the Bank. The prima facie offence alleged is made out against the Applicant.

9. In view of the above submissions and material on record, the Applicant is not entitled to be released on bail. Accordingly, his prayer for bail is rejected.

(Subhash Chand, J.)