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WP-24337-2024

IN THE HIGH COURT OF MADHYA PRADESH
AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE SURESH KUMAR KAIT,
CHIEF JUSTICE

&

HON'BLE SHRI JUSTICE VIVEK JAIN

ON THE 3rd OF OCTOBER, 2024

WRIT PETITION No. 24337 of 2024

KUSUM SAHU

Versus

THE STATE OF MADHYA PRADESH AND OTHERS

Appearance:

Shri Amitabh Gupta - Advocate for the Petitioner.

Shri S.S. Chouhan - Government Advocate for the Respondent/State.

ORDER

Per. Hon'ble Shri Justice Suresh Kumar Kait, Chief Justice

This petition under Article 226 of the Constitution of India seeking Writ of Habeas Corpus has been filed by the petitioner aggrieved by the Order dated 23.01.2024 passed in M.Cr.C.No.58100/2023; Order dated 05.04.2024 passed in M.Cr.C.No.9299/2024; Order dated 14.03.2024 passed in M.Cr.C.No.10613/2024 and Order dated 29.05.2024 passed in M.Cr.C.No.19661/2024.

2. The petitioner is daughter of Jibrakhan Lal Sahu, who is accused in Crime No.157/2021, registered at Police Station Bagsewania, for the offences punishable under Sections 420 and 409 of I.P.C. The said FIR is unnamed and has been registered against petitioner's father on false



allegations, as stated in the present petition, of having committed Cheating and Criminal Breach of Trust and thus, misappropriation of Rs.1,98,000/- of various investors while acting as Director of the Company, namely, Suvidha Land Developers India Pvt. Ltd.

3. The case of the petitioner herein is that the father of the petitioner is neither a Director in the aforesaid Company nor Managing Director nor has collected any money from any of the complainants.

4. Shri Amitabh Gupta, learned counsel appearing on behalf of the petitioner submits that the father of the Petitioner is in custody since the date of his arrest i.e. 12.12.2023. The successive bail applications have been filed and rejected by recording incorrect facts which are absolutely *de-hors* the record filed by the police in the form of charge sheet as well as the records of the erring company filed in support of the bail applications. It is averred that the father of petitioner had filed four bail applications seeking his release from illegal detention under Section 439 of Cr.P.C. which have been dismissed. The Order rejecting the bail applications of father of the petitioners are no less than illegal Orders of continuing detention. Hence, the present petition deserves to be allowed.

5. It is stated in the present petition that though the rejection of bail order can be challenged before the Higher Court i.e. Supreme Court of India, however, the petitioner has preferred to file present petition before this Court.

6. On the other hand, learned counsel appearing on behalf of the



respondent has taken preliminary objection by submitting that by filing the present petition in the nature of habeas corpus, the petitioner is in fact filing an appeal against the bail Orders passed by the learned Single Judge of this Court.

7. Upon hearing learned counsel representing both the sides, this Court finds that it is not in dispute that if any bail Order is rejected by a Court, the aggrieved person may challenge it before the higher Court.

8. As argued by learned counsel for the petitioner, the present case is unique one and requires intervention of this Court to save the fundamental right of the citizens, as has been the case of father of the petitioner who has been in jail since 12.12.2023, which amounts to illegal detention of the father of petitioner.

9. The FIR in question has been registered against the father of the petitioner on the allegation of cheating and criminal Breach of trust thereby misappropriating funds of Rs.1,98,000/- from various investors, while acting as a Director/Managing Director of the Company namely, Suvidha Land Developers India Pvt. Ltd.

10. It is specifically stated in the present petition that the petitioner is neither the Director/Managing Director in the aforesaid Company nor he has collected any money from any of the complainants. After the arrest of father of the petitioner, he filed an application for regular bail before the trial Court and the same was dismissed vide Order dated 15.01.2023. Thereafter, he filed another application vide M.Cr.C.No.58100/2023, which was also



dismissed vide Order dated 23.01.2024.

11. Thereafter, pursuant to filing of the charge sheet, second application for grant of regular bail was filed before the learned single Judge of this Court vide M.Cr.C.No.9299/2024 by disputing the submission of learned Public Prosecutor that the petitioner was working as Managing Director of the Company and by quoting the scheme of doubling of the money deposited within a period of five years, cheated Rupees Two Crore Fifteen Lacs and Sixty Five Thousand from the innocent investors. However, the petitioner and her mother, being confounded by the contents of the Order, filed third application for bail vide M.Cr.C.No.10613/2024. But, this application also met the same fate as earlier, with the same observation recorded by the learned Single Judge. The fourth application also met the same fate.

12. Thus, the father of the petitioner had two options, one to file the present petition and the second to challenge the rejection of the bail Orders before the Hon'ble Supreme Court.

13. It is not in dispute that the respondent/State failed to satisfy this Court on what grounds they made statement before the learned Single Judge that father of the Petitioner was Director/Managing Director.

14. Learned counsel for the respondent/State has drawn the attention of this Court to page 124 of the petition, wherein Para-34 of the Order passed by Securities and Exchange Board of India (SEBI) mentions the names of four Directors, namely, Shri Rajendra Karn Rajpoot, Shri Vinod Kumar Shankhwar, Shri Pardeshi Ram and Shri Jagdish Biswas. But the fact remains



that the father of the petitioner is neither Director nor the Managing Director.

15. It is pertinent to mention here that the petitioner is having equity share of the said Company total value of Rs.6,250/- only. He had made complaint dated 18.08.2017 against the Company and its Directors against some improprieties, however, no action was taken by the concerned Police Station. Thereafter, he filed a complaint under Section 200 Cr.P.C. and his statement was recorded by the concerned Court. Meanwhile, unnamed FIR No.157/2021 was registered on 07th March, 2021. Thereafter, on 12.08.2021 statement of one Dharendra Gaud was recorded i.e, after approximately five months wherein he made allegations against the persons namely Vinod Kumar Shankhwar s/o Shri Jamna Prasad, Rajendra Karan Rajpoot s/o Shri Shanakardayal, Sameer Quresi, s/o Shri Jaheer Quresi, Pardeshiram Sahu, S/o S.R. Sahu, Ramswaroop Sahu, s/o Shri Panchamlala Sahu, Jibrakhanlal Sahu (father of petitioner), s/o Shri Nohar Singh Sahu. However, undisputed fact is that only father of the petitioner made scape got.

16. The same names in a same serial were mentioned by the subsequent complainants. However, the respondent did not bother to verify whether father of the petitioner was Director or Managing Director or not and arrested him on 12.12.2023. Since then, petitioner's father is confined in Central Jail, Bhopal.

17. It is shocking that except father of the petitioner, no one has been arrested so far till date.

18. No doubt, against a bail Order, the higher Court can be



approached. In the present case also, the petitioner could have approached the Supreme Court but a person who is having equity share of Rs.6,250/- only and belongs to a lower strata of the society, has no courage/finances to approach the Supreme Court by engaging a private counsel; and is facing mental agony of rejection of multiple bail applications on the false averments/allegations, as apparent on the fact of the record by the concerned Police Station. Therefore, we find that since the father of the petitioner is in illegal detention, it is a fit case to exercise power under Article 226 of the Constitution of India to entertain this petition and pass orders.

19. Accordingly, in the peculiar facts of the present case, we hereby allow the present petition directing the concerned jail authorities to release the father of the petitioner forthwith subject to his furnishing a personal bond of Rs.5,000/- with one surety of the like amount to the satisfaction of the trial Court.

20. Before parting from this case, in the interest of justice and to save the interest of the investors, we hereby direct the concerned Police Station to interrogate the Directors and Managing Director of the Company as mentioned above which shall be personally supervised by the concerned Superintendent of Police.



21. List in the week commencing 14.10.2024 for reporting compliance.

(SURESH KUMAR KAIT)
CHIEF JUSTICE

(VIVEK JAIN)
JUDGE

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