

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45898 of 2015

Arising Out of PS.Case No. -38 Year- 2012 Thana -PIPRIYA SAHAYAK District- LAKHISARAI

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Divya Jyoti wife of Shri Ashok Gagan Resident of House No. B/9, Ashiana Nagar, P.S. - Rajeev Nagar, District - Patna, Secretary of Vivekanand Paryavaran and Arogya Mission.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chitranjan Sinha, Sr. Adv.

For the Opposite Party/s : Mr. Dilip Kumar (App)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 03-11-2015 Heard learned counsel for the parties as with regard to the prayer of anticipatory bail of the petitioner for alleged offences under sections 353, 406 and 409 of the Indian Penal Code.

Mr. Chitranjan Sinha, learned senior counsel for the petitioner, has tried to explain that whatever allegations have been made against the petitioner in capacity of the owner and convener of Vivekanand Paryavaran and Arogya Mission, a Non-governmental Organization (hereinafter referred to as 'NGO') are factually incorrect and also completely vague, especially when it does not even quantified the amount said to have been misappropriated by the petitioner and her NGO. Mr. Sinha also says that the petitioner is ready for any sort of audit to explain that any and every paise given to the NGO by the Government has

been properly utilized in running of the school in question.

Learned counsel for the State, on the other hand, having referred to the detailed F.I.R. has submitted that from the letter of the District Programme Officer, Bihar Education Project, it would become clear that a sum of Rs.29 lacs was misappropriated by the petitioner and whenever she was asked to explain the accounts she had not only remained silent but also had failed to handover the documents at a point of time when the authority of her running the school through her NGO was also cancelled in the year 2012.

Having regard to the aforementioned submissions when this Court peruses the content of the F.I.R. it becomes very clear that the petitioner after being cancelled of the authority to run the school in question through her NGO was asked to not only handover the complete charge of the documents including the accounts but also give complete breakup of the expenditure made by her from the Government funds allotted to her to the tune of Rs.29 lacs but the petitioner failed to comply any of the order of the authority of Bihar Education Project resulting into lodging of the F.I.R.

In such a situation this Court is not inclined to grant anticipatory bail to the petitioner because by-now the NGOs have also taken the Government to ride by misappropriating



Government fund. Here in this case itself there are prima facie materials to show that the petitioner and her NGO, who was authorized to run the school and for that purpose was also given a sum of Rs.29 lacs had not properly accounted and to top it all it had again withheld the information apart from refusing to handover the charge of the documents and the accounts when the authority of running the school to the petitioner and her NGO was cancelled.

Faced with this situation Mr. Chitranjan Sinha, learned Senior counsel, comes out to say that the petitioner will deposit 50% of the alleged amount of misappropriation within a period of six weeks but then the accounts of the petitioner should be audited and if no amount is found to be misappropriated the aforesaid amount deposited by the petitioner should also be refunded back to her.

This Court considering the aforementioned offer of Mr. Sinha as also the fact that the petitioner is a lady, would direct her (Divya Jyoti) to surrender within a period of six weeks from today with a Bank draft of Rs. 14,50,000/- (Rs. Fourteen lacs fifty thousand) payable in the name of the District Programme Officer, Bihar Education Project, Lakhisarai and if she does so she shall be released on provisional bail for a period of six months on



furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of Chief Judicial Magistrate, Lakhisarai in connection with Piparia P.S. Case No. 38 of 2012, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. as also subject to following conditions:-

(i) The aforesaid draft of Rs.14,50,000/- shall be handed over to the District Programme Officer, Bihar Education Project, Lakhisarai and shall remain subject to the final outcome of the pending trial against the petitioner. In other words, if the petitioner is acquitted this amount of Rs.14,50,000/- shall be handed over to her.

(ii) The petitioner after being granted provisional bail shall approach the State Project Director, Bihar Education Project and submit her full details of accounts explaining the expenditure of Rs.29 lacs. The State Project Director thereafter will get the said accounts verified through the Government Auditors in presence of the District Programme Officer, Bihar Education Project, Lakhisarai and thereafter will himself analyze as to how much amount was utilized by



the petitioner and if any misappropriation was caused by her such a report based on the audit to be conducted under the order of the State Project Director, Bihar Education Project shall be submitted to the court below within a period of 4½ months of the receipt of this order by him through the petitioner.

(iii) The petitioner will also explain her defence including the accounts to the Investigating Officer in this period and the Investigating Officer shall also make necessary verification from the office of the State Project Director, Bihar Education Project and the District Programme Officer, Bihar Education Project, Lakhisarai, whereafter he will submit his notes of investigation to the court below.

(iv) If on the basis of verified audit report submitted by the State Project Director, Bihar Education Project as well as notes of investigation the court below becomes satisfied that there was no misappropriation caused by the petitioner, her provisional bail on her surrendering after a period of six months from the date of being granted provisional bail shall be confirmed, but if, on the other hand, the petitioner is found to have



misappropriated the fund entrusted to her and/or her NGO her provisional bail shall be cancelled and she will be taken into custody, whereafter she will have the liberty to make a prayer for regular bail.

(v) Both the bailors will be a close relative of the petitioner, who will undertake an affidavit giving genealogy as to how they are related with the petitioner. The bailors will also undertake to inform the court if there is any change in the address of the petitioner.

(vi) That the affidavit shall clearly state that the petitioner is not an accused in any other case and if she is, she shall not be released on bail.

(vii) That the bailors shall also state on affidavit that they will inform the court concerned, if the petitioner is implicated in any other case of similar nature after her release in the present case and thereafter the court below will be at liberty to initiate the proceeding for cancellation of bail on the ground of misuse.

(viii) That the petitioner will be well represented on each and every date in course of trial and if she fails to do so on two consecutive dates, her bail will be liable to

be cancelled on this ground alone.

It goes without saying that in this period of six weeks,
the petitioner will not be arrested.

(Mihir Kumar Jha, J)

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