

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25048 of 2015

Arising Out of PS.Case No. -170 Year- 2014 Thana -KARPI District- JEHANABAD

Vijay Ram, son of Sri Pati Ram, Vill + P.O. - Truk Telpa, P.s. - Krpi,
District - Arwal.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mrs. Renu Jha, Advocate.

For the Opposite Party/s: Mr. S. Eheteshmuddin (App)

CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 25-08-2015

Heard learned counsel for the parties.

Having regard to the nature of allegation for offence under Sections 406, 409 and 420/34 of the Indian Penal Code, this Court will not be inclined to grant privilege of anticipatory bail to the petitioner who was a Panchayat Sevak and without whose connivance a sum of Rs. 57,500/- allegedly could not be misappropriated by the Mukhiya alone inasmuch as under the procedure followed for payment, the consent as well as signature of the Panchayat Sevak is also condition precedent. This Court, therefore, would proceed on assumption that when payment of Rs. 57,500/- was made by the Mukhiya, the same also had a tacit consent of the petitioner in capacity of the Panchayat Sevak.

Once this aspect becomes clear, this Court would not be impressed upon the rest of the submission of the learned counsel for the petitioner that there is a departmental proceeding against the petitioner for the alleged misappropriation inasmuch as the law is well settled that

both the departmental proceeding and a criminal proceeding can be simultaneously held for the same charge because they operate in two different fields.

Learned counsel for the petitioner then submits that since the Mukhiya has been granted anticipatory bail by this Court by an order dated 23.04.2015 in Cr. Misc. No. 49694 of 2014 on payment of Rs. 25,000/- by keeping the same subject to the result of the trial, this Court should also grant privilege of anticipatory bail to the petitioner by allowing him to be paid a sum of Rs. 5000/-, such a submission has to be only noted for its being rejected. The amount of Rs. 57,500/- was misappropriated and therefore, if the Mukhiya has been granted anticipatory bail by payment of Rs. 25,000/- under the order of this Court dated 23.04.2015 in Cr. Misc. No. 49694 of 2014, the petitioner cannot get privilege of anticipatory bail on payment of Rs. 5000/-.

The last submission of learned counsel for the petitioner that the ten hand pumps have been already made operational will also not in any way reduce the culpability of the petitioner inasmuch as the amount which was withdrawn and is said to have been misappropriated cannot be accounted for by making those ten hand pumps operational.

The long and short, therefore, of the case is that the amount of Rs. 57,500/- misappropriated, out of which Rs. 25,000/- has been recovered from the Mukhiya and the rest amount has to be recovered from the petitioner either today or in course of trial.

When such an observation has been made learned counsel



for the petitioner submits that the petitioner may be granted privilege of anticipatory bail subject to his making payment of Rs. 32,500/-. Thus, if the petitioner surrenders within a period of four weeks from today and makes payment of a sum of Rs. 37,500/- by way of a bank draft payable in the name of the Collector of Arwal District, he shall be released on bail on furnishing bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Arwal in connection with Karpi P.S. Case No. 170 of 2014; subject to the following conditions:

- (i) That the said bank draft of Rs. 32,500/- deposited by the petitioner in the name of the Collector of Arwal District, shall be handed over to the office of Collector of the Arwal District but the same shall remain subject to the outcome of the result of the trial pending against the petitioner.
- (ii) That both the bailors will be close family relatives 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.
- (iii) That the affidavit shall clearly state that the petitioner is not accused in any other case and if he is, he shall not be released on bail.



- (iv) 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 his release in the present case and thereafter the court below will be at liberty to initiate the proceeding for cancellation of his bail on the ground of misuse.
- (v) That the petitioner will be well represented on each and every date in course of trial and if he fails to do so on two consecutive dates, his bail will be liable to be cancelled on this ground alone.

It is, however, made clear that whatever observation has been made in this order is only for the purpose of considering the prayer for anticipatory bail of the petitioner.

(Mihir Kumar Jha, J)

Sujit/-

U			
---	--	--	--