

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39932 of 2015

Arising Out of PS.Case No. -34 Year- 2015 Thana -C.B.I CASE District- MUZAFFARPUR

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Mithlesh Tiwari @ Mithlesh Kumar Tiwari Son of late Deo Narayan Tiwari
resident of Village Dumaria, P.s Mahamadpur, District Gopalganj.

.... Petitioner/s

Versus

The State of Bihar through Department of Vigilance, Patna

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Y.C. Verma, Sr. Advocate

For the Vigilance : Mr. Rabindra Kumar,
A.C. to Mr. Ramakant Sharma(L/O(I.C.Vig))

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

4 29-03-2016 Heard learned Senior Counsel for the petitioner and

learned counsel appearing on behalf of the Vigilance.

The petitioner being the Chairman of Pandit Din Dayal
Upadhyay Inter College, Khajooria, Gopalganj apprehends his
arrest in connection with a case registered for the offence
punishable under Sections 409/420/467/468/471/477(A)/ 120B of
the Indian Penal Code and Section 13(1)(d) of the Prevention of
Corruption Act.

In the present case, the allegation is that as Chairman of
the aforementioned College, he had participated in a meeting
which has resulted in a decision for making payment of money in
favour of the respective teachers who had worked in the College
as well as non-teaching staffs.

Learned counsel for the petitioner submits that earlier the

College was not aided but subsequently, it came to be aided. As a result thereof, certain grants were released for making payment to the teaching and non-teaching staffs of the College as per the instruction contained in letter dated 22.10.2009 issued by the Human Resources Department. In the said letter, it had been indicated that the persons who have been working up to 26.03.2008 given the payments as per the decision taken by the Government. As a consequence of such a letter, the College had been preparing a list of teachers as well as non-teaching staffs who were to be made the said payment as an amount of rupees fifty lacs has been released in favour of the College. The matter relating to payments was considered at a meeting of the College and in the said meeting, eight members of the Managing Committee have participated including the Principal and the Secretary as well as the present petitioner who was the Chairman of then Managing Committee and a decision was taken that all persons who had worked up to 26.03.2008 given payments out of the funds released by the Government. In accordance with the said decision, which was endorsed by all members of the Managing Committee, the payments were released by the Principal. He submits that while releasing payments in favour of the recipients of the College, the Principal had taken an undertaking/affidavit that in case of any discrepancy or payments having been made wrongly, they would

be required to refund the aforementioned amounts paid to them. Subsequently, certain disgruntled person who had left the College, made complaints with false and frivolous allegations. The present prosecution was lodged against the petitioner, the Principal, Secretary and other members of the College.

He further submits that since clarification was sought by most of the colleges regarding payments, the District Education Officer, Gopalganj sent a letter bearing number 46 dated 27.01.2011 to the College stating that the payments were to be made under the joint signature of the Secretary and the Principal of the College alone. It was further stated in the letter that only those teaching as well as non-teaching staffs should be made payment who had functioned on the posts which were duly sanctioned as per the guidelines of the Department. It was also indicated in the said letter that the utilization certificate after having made payments be sent to the Department by the College. It is on account of the violation of this letter which has been alleged by the Department and consequently, the petitioners are now facing prosecution.

The contention advanced by learned counsel for the petitioner is that the aforementioned letter dated 27.01.2011 was never received in the College prior to the decision taken by the Managing Committee and as such, whatever payments were made,

were made in a bonafide manner and the decision was duly endorsed by all members of the Managing Committee. So far as petitioner is considered, he has had a limited role to play inasmuch as when the decision was taken he had made a specific query from the Secretary of the College as to whether any further instruction had been received by the College in this regard.

Learned counsel for the petitioner has also pointed out to an order dated 19.01.2016 passed in Cr. Misc. No. 37996 of 2015 whereby this Court after considering all aspects of the matter has been pleased to extend the privilege of anticipatory bail to one Amrendra Kumar Dwivedi, Principal of the College concerned.

Learned counsel for the Vigilance submits that the case of this petitioner is at variance with the aforementioned Principal who had taken an undertaking from the persons to whom he had released payment that in case the said was disputed they would refund the same. However, after viewing all the facts and circumstances of the case and taking into note the minutes of the meeting of the Managing Committee, I find that the Chairman had taken precaution to enquire as to whether there was any further instruction. However, in the absence of any specific instruction, a decision was taken which was duly endorsed by all the members of the Managing Committee.

In view of the aforesaid facts and circumstances, let

the petitioner, in the event of his arrest / surrender within a period of four weeks from the date of receipt/production of a copy of this order, be enlarged on bail on furnishing bail bonds of Rs. 10,000/- (ten thousand) with two sureties of the each amount to the satisfaction of the learned Special Judge, Vigilance, North Bihar, Muzaffarpur in connection with Vigilance P.S. Case No. 034/2015 subject to the conditions as laid down under Section 438(2) of the Cr. P.C.

(Anjana Mishra, J)

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