

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.43941 of 2016

Arising Out of PS.Case No. -25 Year- 2016 Thana -GORIAKOTHI District- SIWAN

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Kamlesh Kumar, S/o Late Sitaram Singh, resident of Village- Sikatia, P.S.-
Jamo Bazar, District- Siwan.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Raju Prasad, Advocate.

For the Opposite Party : Mr. Sanjay Kumar, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

4 06-12-2016 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner is apprehending his arrest in connection
with Goreya Kotthi (Gorea Kothi) P.S. Case No. 25 of 2016 for
the offences instituted under Sections 406, 419, 420, 467, 468, 471
and 120(B) of the IPC.

The allegation against the petitioner is of taking Rs.
5,00,000/- with regard to the work relating to construction of
School building, but the work was not found in accordance with
specification and thus, the petitioner is said to have defalcated the
amount alongwith others, totaling Rs. 25,00,000/- and odd.

On 05.10.2016, it was submitted on behalf of learned
counsel for the petitioner that the petitioner was to supply bricks



worth Rs. 5,00,000/- out of Rs. 25,00,000/-for construction of seven class rooms for the School. Out of Rs. 25,00,000/-, Rs. 5,00,000/- was paid to the petitioner for the supply. It was also submitted that the petitioner has already made supply and has been made accused due to mistake of fact. The said fact is supported from perusal of Annexure-3 series and Annexure-4 series to the rejoinder filed on behalf of learned counsel for the petitioner. On the said submission of learned counsel for the petitioner, this Court had directed the Superintendent of Police, Siwan, to verify the said fact and submit a report.

A counter-affidavit sworn by the Deputy Superintendent of Police, Siwan, has been filed on behalf of learned counsel for the State. Paragraph No. 2 to the said counter affidavit reads as follows:-

“2. That it is relevant to state here that investigating officer of case cum officer-in-charge of Goreya Khothi police station was asked to submit report on the basis of the evidence collected during investigation of the case, who submitted that during investigation and inspection of P.O.(place of occurrence) the school building was not being constructed nor even the bricks were found at the P.O. though Rs. 5 lakhs had been withdrawn by accused Kamlesh Kumar on the basis of cheques.”

Admittedly, the petitioner had made incorrect statement



in light of the report submitted by the Superintendent of Police, Siwan.

It is submitted on behalf of learned counsel for the petitioner that the petitioner has got no criminal antecedent. There is no allegation of tampering with the witnesses alleged against the petitioner. The petitioner still reiterates his earlier submission that he has been made accused in the present case due to mistake of fact. There is no substantive evidence to suggest his implication in the present case. The police has submitted a perfunctory enquiry report.

On behalf of learned counsel for the State, it is submitted that there is specific allegation against the petitioner for making withdrawal of Rs. 5,00,000/- without making any supply of bricks which was to be used for construction of School in collusion with the Headmistress co-accused Kiran Kumari. The matter was verified by the Superintendent of Police, Siwan, on the direction of this Court and the allegations were found to be true.

Considering the aforesaid facts and circumstances, I am not inclined to grant anticipatory bail to the petitioner. The same is rejected in connection with Goreya Kotthi (Gorea Kothi) P.S. Case No. 25 of 2016, pending in the court of learned J.M. Ist Class, Siwan. Anyhow, if the petitioner surrenders in the court below the



same shall be considered on its own merit without being
prejudiced by the order of this Court.

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(Sudhir Singh, J)

