

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39141 of 2016

Arising Out of PS.Case No. -270 Year- 2016 Thana -KOTWALI District- PATNA

1. Harihar Nath Jha son of Late Brajbanshi Jha resident of village -
Mahmadi, P.S. - Patahi, District - East Champaran at Motihari, presently
residing at Flat No. -402, Dev Kunj Apartment, Laxmi Narayan Path, North
S.K. Puri, Town & Dist. - Patna.

.... Petitioner/s

Versus

1. The State of Bihar through Cabinet Vigilance.

.... Opposite Party/s

with

Criminal Miscellaneous No.45622 of 2016

Arising Out of PS.Case No. -270 Year- 2016 Thana -KOTWALI District- PATNA

1. Visheshwar Prasad Yadav @ Bisheshwar Prasad Yadav@ Visheshwar
Prasad, Son of Late Hari Lal Yadav, Resident of Village- Nista, P.S. Surya
Garha, in the District of Lakhisarai.

.... Petitioner/s

Versus

1. The State of Bihar
2. Vigilance Investigation Bureau, Bihar, Patna.

.... Opposite Party/s

Appearance :
(In Cr.Misc. No.39141 of 2016)
For the Petitioner/s : Mr. Y.V.Giri
Mr. Ashish Giri
(In Cr.Misc. No.45622 of 2016)
For the Petitioner/s : Mr. Akhileshwar Pd. Singh
Mr. Bimal Kumar
For the Opposite Party/s : Mr. Ajay Mishra (In both cases)

CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
CAV ORDER

06/08.12.2016

1. Both the above stated petitions arise out of Kotwali P.S.
case no. 270/2016 registered under sections 420, 465, 467, 468, 471,
188, 201, 212, 120B of the Indian Penal Code, sections 8, 9, 13 (I) (e)
read with section 13 (2) of the Prevention of Corruption Act and



accordingly, a common order is being passed in these cases.

2. I have heard all the concerned parties.

3. Petitioner in Cr. Misc. no. 39141/2016 was secretary of Bihar School Examination Board whereas petitioner in Cr. Misc. no. 45622/2016 was Principal of Balak High School, Rajendra Nagar, Patna at the relevant period. Both the above stated petitioners were made accused in infamous topper scam case which rocked the entire country when it came light that some undeserved candidates topped in the examination conducted by the Bihar School Examination Board. The local as well as national medias highlighted the above stated scam and thereafter, Director, Secondary Education, Government of Bihar, Patna lodged the present case disclosing this fact that through unfair means, some students of Bishundeo Rai College, Kiratpur, Raja Ram, Bhagwanpur, Vaishali at Hajipur got top rank in the stream of Arts and Science in the Intermediate examination held between 24.2.2016 to 5.3.2016 by making manipulation and interpolation in their copies. It was also disclosed by the informant (Director) that evaluation center of examinees of Vaishali district was at Bhabua and Ara districts but the copies of examinees of Bishundeo Rai College, Kiratpur, Raja Ram, Bhagwanpur, Vaishali at Hajipur were sent to Balak High School, Rajendra Nagar, Patna for evaluation to help the undeserved candidates.

4. In course of investigation, petitioners were summoned by Special investigation team for interrogation and questionnaire was handed over to them and after that they were arrested and made accused in the present case.



5. Three allegations were attributed against the petitioner in Cr. Misc. no. 39141/2016. First, he got issued incomplete admit card under the electronic signature in respect of FIR named accused Salini Rai. Second, answer sheets of the FIR named accused were brought from evaluation center without any entry and third, he participated in grant of affiliation to the colleges which were not fulfilled the required criteria.

6. The accusation against the petitioner in Cr. Misc. no. 45622/2016 is that he being Principal of Balak High School, Rajendra Nagar, Patna participated in the above stated mal-practice and forgery.

7. Learned senior counsel Mr. Y.V. Giri, appearing for the petitioner in Cr. Misc. no. 39141/2016 submitted that it was the Chairman of Intermediate Council who sent the concerned copies to the college of the petitioner in Cr. Misc. no. 45622/2016 in the capacity of the chairman of the aforesaid council without giving any information to the petitioner as the Chairman disclosed that he was himself monitoring evaluating process. It was further submitted that the petitioner primarily raised objection but he kept mum as the said act was done by the Chairman of the council and he was subordinate to him and had no occasion to doubt the integrity of the Chairman. It was further submitted that so far grant of affiliation is concerned, the affiliation of any college is based normally on the recommendation of the concerned District Education officer and the informant of the present case was also a member of the concerned committee and put his signature on the recommendation and moreover, the petitioner in Cr. Misc. no. 39141/2016 was not alone responsible for grant of



affiliation to ineligible colleges. It was further submitted by him that so far as issuance of incomplete admit cards is concerned, it is well known as well as admitted fact that admit cards are issued through electronic signature and the same is done by the Examination department even without showing admit cards to the higher officials, therefore, even if incomplete admit cards were issued having electronic signature, then also, petitioner can not be made responsible. It was further submitted that having more or less similar allegation, several co-accused have already been granted the privilege of bail by different benches of this court.

8. Learned senior counsel Mr. Giri also contended that admittedly, petitioner in Cr. Misc. no. 39141/2016 is a public servant and cognizance for the offences of Prevention of Corruption Act could not have taken against him without prior sanction. In the present case, it is apparent from perusal of order dated 5.9.2016 (Annexure A to the supplementary affidavit) that at the time of taking cognizance, there was no sanction in respect of the aforesaid petitioner. It was further submitted that admittedly, cognizance has been taken by Special Judge, Vigilance, Patna and as a division bench of this court in the case of **Ahmad Ashfaq Karim vs. State of Bihar through Vigilance and another reported in 2015 (I) PLJR page 178** has held that if the vigilance court does not take cognizance for the offence of Prevention of Corruption Act, the Vigilance Judge has got no jurisdiction to take cognizance of the offence punishable under Indian Penal Code and, therefore, in the present case, cognizance taken by the vigilance court against the petitioner is illegal and



without jurisdiction and, therefore, petitioner in Cr. Misc. no. 39141/2016 can not be detained in judicial custody.

9. Learned senior counsel Mr. Akhileshwar Pd. Singh appearing for the petitioner in Cr. Misc. no. 45622/2016 echoed the above stated submissions adding that the petitioner is in jail custody since long and except suspicion, there is nothing against him. Moreover, neither the petitioner brought answer sheets at his college nor he evaluated answer sheets and he has been made accused only on the ground that he was Principal of the School in which copies of FIR named examinees were evaluated.

10. On the other hand, learned Special Public Prosecutor Mr. Ajay Mishra appearing for the Vigilance vehemently opposed the prayer submitting that in course of investigation, Investigating officer collected several materials to show involvement of these petitioners in the present crime. It was submitted by him that the Secretary of the Board, the petitioner in Cr. Misc. no. 39141/2016, was aware of this fact that some answer sheets had been brought to the office of the Board from evaluation centre and subsequently, the aforesaid copies were recovered from his office and apart from this, aforesaid petitioner was also aware of this fact that without any written order center as well as evaluation place were changed but he did not send any report to the higher officer rather he supported the act of other accused by keeping mum and, therefore, the aforesaid circumstances go to show that he was also involved in this scam.

11. Mr. Mishra also submitted that so far as the petitioner in Cr. Misc. no. 45622/2016 is concerned, while he was interrogated, he



accepted this fact that the Chairman of the council took answer sheets of some students from his college and the materials available on the case diary go to show that answer sheets of some students were brought from his college and later on, those students got top rank in merit and, therefore, documentary as well as circumstantial evidence collected by the Investigating officer supports the allegation levelled against both petitioners.

12. Considering the aforesaid facts and circumstances as well as submissions of the parties, in my view, it is not a fit case for grant of bail to the petitioners, at least, at this stage. Hence, their prayer for bail in connection with above stated case stands rejected. However, if the prosecution fails to lead and conclude its evidence within four months from the date of receipt/production of a copy of this order, petitioners may renew their prayer for bail.

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(Hemant Kumar Srivastava,J)

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