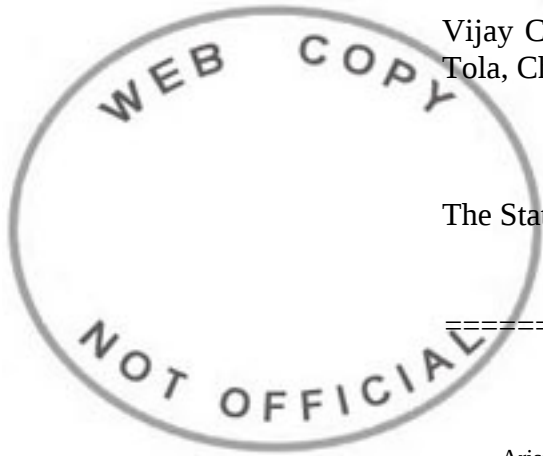




IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51161 of 2015

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Vijay Choudhary, son of Late Tetar Choudhary, resident of Village- Bery Tola, Choudhary Bigha, P.O. Bery, P.S.- Salaiya, District- Aurangabad.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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with

Criminal Miscellaneous No.54591 of 2015

Arising Out of PS.Case No. -23 Year- 2015 Thana -SALAIYA District- AURANGABAD

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Shailendra Kumar Gupta Son of Birendra Kumar Gupta Resident of Village : Goh, P.S. : Goh, District - Aurangabad.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :
(In Cr.Misc. No.51161 of 2015)
For the Petitioner/s : Mr. Ajay Kumar Thakur
Mr. Pravind Kumar
For the Opposite Party/s : Dr. Ravindra Kumar, APP
(In Cr.Misc. No.54591 of 2015)
For the Petitioner/s : Mr. Anil Kumar Sinha
For the Opposite Party/s : Mr. Binod Kumar -3, APP

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

3 12-02-2016 Since both these applications arise out of the same police station case, therefore, with the consent of the parties, both of them have been heard together and are being disposed of by this common order.

The petitioners of both the applications apprehend their arrest in a criminal prosecution registered under Sections 409, 420/34 of the Indian Penal Code.

As per prosecution case, for the scheme No. 3 of 2013-14 for construction of a building for Rajiv Gandhi Sewa Kendra

against an estimated amount of Rs. 10, 000, 00/- (Ten lacs) an amount of Rs. 6,25,938/- has been withdrawn by the accused persons including these petitioners, but the works have not been completed to the extent of withdrawal of money by them.

The learned counsel appearing on behalf of the petitioners submit that, in fact, construction work was still going on, but no measurement was taken by any expert or a committee of experts and it has nowhere been stated in the F.I.R. vide Annexure-1 that how much money was allegedly misappropriated by the individual accused persons. According to the learned counsel, the allegations against them are vague and unspecific. It is further submitted that the petitioners are prepared to complete the works which they are alleged to have not completed or/ and they are prepared to compensate the money withdrawn by them.

Taking into consideration the aforesaid submissions, this Court is inclined to accede to the prayer made on behalf of the petitioners for grant of anticipatory bail till submission of charge-sheet only with the following conditions/ directions:

- (i) The informant shall get the works, completed by the accused persons, measured either by some competent government officer or by some expert Committee, if need be after obtaining permission/ direction from the District Collector, Aurangabad.
- (ii) If the construction work is still going on, then the executing agent(s) shall be allowed to complete the construction works for the money they have already withdrawn.
- (iii) If after measurement by the expert

committee/ govt. officer(s) it is found that the accused persons have not completed the work to the extent of money withdrawn by them, then they will either deposit the remaining amount in the Government treasury or they will complete the remaining works as per direction of the District Collector, Aurangabad.

Hence, in the event of their arrest or surrender in the Court below within a period of four weeks from today, let the above named petitioners of both the applications be enlarged on bail on furnishing bail-bonds of Rs. 25,000/- each with two sureties of the like amount each, till submission of charge sheet only, to the satisfaction of the learned Judicial Magistrate, 1st Class, Aurangabad in connection with Salaiya P.S. Case No. 23 of 2015, subject to the conditions laid down under Section 438(2) Cr.P.C and subject to the further conditions, apart from the conditions/ directions indicated above, that:

- (A). One of the bailors must be government servant or close family members of the petitioners, who will file an affidavit in the Court below showing their relationship with the petitioners,
- (B). if the petitioners are found involved in same and similar nature of cases in future, then in that case the informant/ prosecution shall be at liberty to file a petition for cancellation of the bail bonds of the petitioners, and if such a petition is filed, the court below would be obliged to dispose of the same in accordance with law after giving an opportunity of hearing to all concerned and

(C). the petitioners shall make regular pairvi in the court below in the present case either by appearing themselves in person or through representation by their lawyer on each and every dates, and if on two consecutive dates petitioners fail to make pairvi, then the court below shall be at liberty to cancel the bail bonds of the petitioners.

(Birendra Prasad Verma, J)

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