

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5495 of 2017

Arising Out of PS.Case No. -44 Year- 2006 Thana -C.B.I CASE District- MUZAFFARPUR

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Binod Kumar Jha, Son of Late Birendra Jha, Resident of Village + Post-
Parsauni, P.S.- Bisfi (Beni Patti), District- Madhubani.

.... Petitioner

Versus

The State of Bihar through Vigilance.

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Avinash Kumar

For the Opposite Party : Mr. Ramakant Sharma(L.O,I/C Vigi)

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

2 07-02-2017 Petitioner has filed this application under Section 438 of the Cr.P.C. in a case registered for the offence under Sections 420, 465, 467, 468, 471, 477(A) and 120B of the IPC and Section 13(1)(d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

One Anil Sharma filed a complaint case no.16 of 2005 on the file of Special Judge, Vigilance, North Bihar, Muzaffarpur against nine accused persons alleging inter-alia that accused persons named in the complaint petition being the Mukhiya, Panchayat Secretary and working Agent in connivance with other accused took four quintal of rice for black marketing the same in local market. The complainant further alleged that in implementation and execution of scheme no.5/02-03, they



committed gross irregularity and mal-practices for which the District Magistrate, Muzaffarpur was informed. The matter was enquired by Executive Magistrate and on the basis of said enquiry report Saraiya P.S.Case No.324 of 2004 was registered for the offence under Sections 406, 409, 420 and 120B of the IPC. But in the said case, the investigating officer did not take any action against the accused. Thereafter, he filed the complaint case before the Vigilance Court. The complaint petition was sent to Inspector of Police, Vigilance Bureau, Muzaffarpur for conducting enquiry. After completing enquiry, the Vigilance submitted report to the DIG, Vigilance, Patna on the basis of which the present case vide Vigilance P.S.Case No.44 of 2006 has been registered against the accused persons.

The learned counsel for the petitioner submits that on the relevant date, the petitioner was an Assistant Engineer and he had simply granted technical approval which was prepared by Junior Engineer for the scheme no.5/2002-2003 relating to Amartaj Singh Gram Panchayat Saraiya Block under Muzaffarpur district. The scheme was opened on 02.01.2003 by Mukhiya and Panchayat Secretary and the estimate of the scheme for Rs.53,600/- was prepared by Junior Engineer on 03.02.2003. The executing agent Bindeshwar Paswan executed an agreement and,



accordingly, work was executed. The petitioner had no role in the said scheme except approving the technical sanction. The learned counsel has further submitted that a private complaint should not have been entertained by the Vigilance Court against the government servant. In preliminary enquiry also there is nothing against this petitioner constituting any offence.

The learned APP opposed the submission.

The petitioner was an Assistant Engineer and had given technical sanction to the scheme in question which was prepared by the Junior Engineer. In the report submitted by the investigating team consisting of Chief Engineer-cum-Special Secretary, Building Department, Joint Secretary-cum-OSD-Building Department and two other technical officers which is Annexure-6 of the bail application, I find that at the time of execution of scheme no.2-2002-2003, this petitioner was not posted and so it was reported that he is not concerned with the charge no.3. It further appears that this petitioner was not named in the complaint case 16/2005 which was filed by a private person. The accused, namely, Ahmad Mahmood whose name appeared in the complaint petition has been allowed anticipatory bail by this Court on 20.04.2016 in Cr.Misc.No.9696 of 2016. The other accused Sudhir Kumar Sahu who is named in the complaint



petition has also been allowed bail by the Special Judge, Vigilance, North Bihar in ABP No.28 of 2016. This petitioner is neither named in the original complaint petition nor any incriminating material has been shown against the petitioner regarding any of his gross irregularity or mal-practices or misappropriation of Govt. money.

Considering the aforesaid facts and circumstances, the prayer of anticipatory bail to the petitioner is allowed and the petitioner (Binod Kumar Jha) above named is directed to be released on bail in the event of his arrest or surrender before the learned court below within a period of six weeks from today in connection with Vigilance P.S. Case No. 44 of 2006 arising out of Complaint Case No.16 of 2005 (Special Case No.28 of 2006) on furnishing bail bond of Rs.10,000/-(Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Special Judge, Vigilance, North Bihar, Muzaffarpur, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

(Sanjay Kumar, J)

Brajesh Kr./-

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