

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51566 of 2017

Arising Out of PS.Case No. -533 Year- 2011 Thana -BHABHUA District- BHABHUA (KAIMUR)

Munna Prasad Gupta, Son of Dhillu Sah, resident of Village- Panwasi Jan Sewa Kendra, Mohania Station Road, Police Station- Bhabhua, District- Kaimur (Bhabhua).

.... Petitioner/s

Versus

The State of Bihar through the Department of Vigilance, Bihar, Patna

.... Opposite Party/s

With

Criminal Miscellaneous No.51591 of 2017

Arising Out of PS.Case No. -533 Year- 2011 Thana -BHABHUA District- BHABHUA (KAIMUR)

Md. Ashlam son of Late Ainul Haque, Resident of Milki Mohalla, Ara, P.S. Ara Town, District Bhojpur.

.... Petitioner/s

Versus

The State of Bihar through the Vigilance, Patna.

.... Opposite Party/s

Appearance :

(In Cr.Misc. No.51566 of 2017)

For the Petitioner/s : Mr. Vipin Kumar Singh

For the Opposite Party/s : Mr. Ramakant Sharma (L.O.,Inc.,Vigilance)

(In Cr.Misc. No.51591 of 2017)

For the Petitioner/s : Mr. Satyabir Bharti

For the Opposite Party/s : Mr. Ramakant Sharma (L.O.,Inc.,Vigilance)

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

02/ 09-11-2017

Heard Mr. Bindhyachal Singh and Mr.

Satyabir Bharti, learned counsels for the petitioners and Mr.

Amresh Kumar, learned counsel for the Vigilance.

The petitioners are apprehending their arrest in a case registered for the offences punishable under Sections 420, 409, 467, 468, 471/34 and 120B of the Indian



Penal Code and Sections 13(2) read with 13(1) (d) of the Prevention of Corruption Act.

The prosecution case got initiated on the written report of Dr. Ras Bihari Singh, Civil Surgeon, Kaimur at Bhabua, wherein it is alleged that the then Civil Surgeon, Dr. Uchit Lal Mandal committed serious financial irregularities to the tune of Rs.5.5 crores which has been detected during audit, hence, in view of the letter dated 22.07.2011 the Secretary, Health –cum- Executive Director, State Health Society as well as audit report of the State Health Society, the FIR was lodged. It is alleged that the then Civil Surgeon, Dr. Uchit Lal Mandal made payments to the tune of Rs.5.5 crores to the Non Government Organizations (NGOs), Private Nursing Homes, Private Hospital and private doctors under the Family Planning (sterilization) Scheme and the Mother and Child Security Scheme without obtaining the prior permission from the Chairman –cum- District Magistrate, Kaimur at Bhabua.

It is alleged against Munna Prasad Gupta (petitioner in Cr. Misc. No. 51566 of 2017) that being the owner of Panwasi Jan Seva Kendra a Nursing Home he received Rs.1,63,500/- for conducting sterilization operation, but he did not follow the direction as contained in letter No. 4437 dated



26.05.2007 of the State Health Society as a result, he could not pay Rs.150/- per operation to the Motivators.

It is alleged against Md. Ashlam (petitioner in Cr. Misc. No. 51591 of 2017) that being the Secretary of NGO namely, Bhojpur Gramin Vikash Parishad got sterilization operation done in the Mundeshwari Hospital and both the organizations received total amount of Rs.10,32,000/- for conducting Sterilization operation and safe delivery, but neither the nursing home nor hospital followed the directions as issued vide letter No. 4437 dated 26.05.2007 of the State Health Society as a result did not pay Rs.150/- per operation to the Motivators.

It is submitted by Mr. Bindhyachal Singh, learned counsel appearing for the petitioner, Munna Prasad Gupta (Cr. Misc. No. 51566 of 2017) that the thrust of accusation of making payment to the tune of Rs.5.5 crores to the Non Government Organizations (NGOs), Private Nursing Homes, Private Hospital and private doctors under the Family Planning (sterilization) Scheme and the Mother and Child Security Scheme without obtaining prior permission from Chairman –cum- District Magistrate, Kaimur at Bhabua is against the then Civil Surgeon, Dr. Uchit Lal Mandal, who has



been granted anticipatory bail vide Cr. Misc. No. 27053 of 2012, whereas other similarly situated accused Dr. Dineshwar Singh has been granted anticipatory bail by a Bench of this Court vide Cr. Misc. No. 29929 of 2017 and Dr. Idrish Jauher has been granted anticipatory bail vide Cr. Misc. No. 55553 of 2016. It is further submitted by learned counsel for the petitioner that the petitioner's name sprang up during investigation, moreover, the only accusation against the petitioner is that he did not follow the directions contained in letter No. 4437 dated 26.05.2007 issued by State Health Society as a result did not pay Rs.150/- per operation to the Motivators. It is submitted that such permission was accorded to the petitioner's Nursing Home and the same has been brought on record as Annexure-2. Moreover, no Motivator come forward to say that payments have not been made to the Motivators. This is not the case of prosecution that operations were not performed. The investigation has still not been concluded.

It is submitted by Mr. Satyabir Bharti, learned counsel appearing for the petitioner Md. Ashlam (Cr. Misc. No. 51591 of 2017) that the thrust of accusation is against the then Civil Surgeon, Dr. Uchit Lal Mandal, who has been granted anticipatory bail. The petitioner's name sprang up during



investigation. The only accusation against the petitioner is that he did not follow the direction with regard to payment of Rs.150/- per operation to the Motivators. A specific statement has been made in paragraph 12 of the petition that each Motivators have been paid as per the directions. It is further submitted that it is not the case of the prosecution that the operations were not conducted in pursuance to the direction and the payments were received without conducting operation.

Learned counsel for the Vigilance submits that the huge amount of money has been misappropriated by the then Civil Surgeon, Dr. Uchit Lal Mandal through different hospitals, nursing homes and doctors including the petitioners as a result, the case has been instituted. However, he does not dispute that the thrust of accusation is against the then Civil Surgeon and the investigation has not concluded as yet.

Considering the rival submissions of the parties, keeping in view the fact that the thrust of accusation is against the then Civil Surgeon, Dr. Uchit Lal Mandal, who has been granted anticipatory bail, the prosecution case is not that operations were not conducted, moreover, the fact that both the petitioners are the Owner and Secretary of the NGO and operations were conducted by the doctors, who have been



granted anticipatory bail and the fact that the money was disbursed in the year 2009-10 and 2010-11 whereas the FIR was registered in 2011, the petitioners name sprang up during investigation and a statement has been made in paragraph 3 of both the petitions that the petitioners have no criminal antecedent, let the above named petitioners be released on anticipatory bail, in the event of arrest or surrender before the learned Court below within a period of twelve weeks from today, on furnishing bail bonds of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of learned Special Judge, Vigilance 1st, Patna in connection with Special Case No. 07 of 2012 arising out of Bhabhua P.S. Case No. 533 of 2011, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Dinesh Kumar Singh, J)

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