

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.41948 of 2017

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

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Sanjay Kumar Choudhary, son of Ram Kishor Chaudhary, resident of ward no. 1, Hanuman Nagar, Bhabua, P.S. Bhabua, District- kaimur at Bhabua.

.... Petitioner/s

Versus

The State of Bihar through the Director General, Vigilance Investigation Bureau, Bihar Patna

.... Opposite Party/s

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With

Criminal Miscellaneous No.43599 of 2017

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

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Dr. Shushma Sinha, w/o Amar Nath, resident of Mohalla-Sahmir Takiya, P.S.-Rampur, Distt.-Gaya

.... Petitioner/s

Versus

The State of Bihar, through the Secretary, Department of Vigilance, Govt. of Bihar

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.41948 of 2017)

For the Petitioner/s : Mr. Jitendra Kumar Pandey, Advocate

For the Opposite Party/s : Mr. Ramakant Sharma, LO, I/c, Vigilance

(In Cr.Misc. No.43599 of 2017)

For the Petitioner/s : Dr. Shashi Shekhar Kishore, Advocate

For the Opposite Party/s : Mr. Ramakant Sharma, LO, I/c, Vigilance

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL ORDER

13/ 25-01-2018

By order dated 23.01.2018, petitioner of both the

cases were directed to deposit a cost of rupees five thousand each

in Patna High Court Legal Aid Committee for committing

misconduct mentioned in the order itself.

An Interlocutory Application has been filed on



behalf of petitioner of Cr. Misc. No.41948 of 2017 and it has been submitted that on the relevant date file was left in the Chambers of Mr. B. P. Pandey, Sr. Advocate, who was engaged by the petitioner for argument. He was not available on account of his illness on 23.01.2018 and prayer was made to pass over the case by his junior counsel. Advocate on record was not having file and, therefore, such prayer was made.

Petitioner of Cr. Misc. No.43599 of 2017 has submitted that he was present on that date at the time of calling of the case, but later on he learnt that this case was also passed over along with Cr. Misc. No.41948 of 2017. He never made any prayer to pass over the case. Both the cases have been fixed and listed together as they arise out of the same P.S. Case number, but the counsel for the petitioners in both the cases are different.

In view of the submission made by the counsel for the petitioners, the petitioners are exempted from depositing cost of rupees five thousand each as ordered by this Court on 23.01.2018.

Heard learned counsel for the petitioners and learned APP for the State.

Petitioners apprehend their arrest in **Special Case No.07 of 2012 arising out of Bhabhua P.S. Case No.533 of**



2011 instituted for the offence under Section(s) 409, 420, 467, 468, 471, 120-B/34 Indian Penal Code and Section 13(12) (D) of the Prevention of Corruption Act.

Case has been instituted by the informant, Dr. Ras Bihari Singh, Civil Surgeon, Kaimur, Bhabhua, in which it is alleged that the co-accused, Dr. Uchit Lal Mandal, being Civil Surgeon committed financial irregularities of huge amount to the tune of crores. As per letter no.1117 dated 22.07.2011 written by the Secretary, Health-cum-Executive Director, State Health Services, as well as Audit Report bearing No.5 of 11/12 of the State Health Society, it is apparent that several irregularities were found during course of audit. It is further alleged that it was found that Dr. Uchit Lal Mandal made payment to the tune of Rs.5.50 crores to the NGOs, Private Nursing Homes, Private Hospitals and Private Doctors under the Family Planning (sterilization) Scheme and the Mother and Child Security Scheme without obtaining prior permission from the District Magistrate-cum-Chairman, of the District Health Society, Bhabhua.

Allegation against petitioner, Sanjay Kumar Choudhary, (Cr. Misc. No.41948 of 2017) is that he was running NGO in the name and style of Sai Hospital, Hata, and he has received Rs.1,65,000/- under sterilization scheme.



Allegation against petitioner Dr. Sushma Sinha (Cr. Misc. No.43599 of 2017) is that she was doing operation of sterilization in the Vimla Bandhayakaran and Parsuti Grih of Dr. Bhuneshwar Singh. There is allegation against the NGO that it received Rs.4,60,000/- fraudulently by showing the list of 307 operation of ladies. The NGO violated the instructions as given in the Letter No.4437 dated 26.05.2017 of the State Health Society and also not paid Rs.150/- per operation to motivators. Further allegation is that the aforesaid NGO was also not verified by the Quality Assurance Committee.

Learned counsel for the petitioner, Sanjay Kumar, (Cr. Misc. No.41948 of 2017) has submitted that it has come during investigation that petitioner was running NGO in the name and style of Sai Hospital, Hata, and he has received Rs.1,65,000/- under sterilization scheme. Counsel for the Vigilance has referred to para 518 and 260 of the case diary, wherein, it has been mentioned about payment of Rs.1,65,000/- to the NGO of this petitioner, which has been received by the aforesaid NGO. It has further been submitted that it has come in para 268 of the case diary that although money has been paid in the account of this petitioner, but aforesaid Sai Hospital was not found in existence. Counsel for the petitioner has submitted that he is ready to make



payment of Rs.1,65,000/-, which he has received as payment on behalf of aforesaid Hospital, subject to final result of the case.

Counsel for the petitioner, Dr. Shushma Sinha, (Cr. Misc. No.43559 of 2017) has submitted that there is no allegation of any overt act against her. She is, at present, Associate Professor in A. N. Magadh Medical College. During investigation, it has come against this petitioner that she has performed operation in Vimla Bandhayakaran and Parsuti Grih of Dr. Bhuneshwar Singh and Shakuntala Kumari. But there is no document to support such allegation. There is allegation that the aforesaid NGO received Rs.4,60,000/- fraudulently by showing the list of 307 operation of ladies. There is also allegation against the aforesaid NGO that it violated the instructions as given in the Letter No.4437 dated 26.05.2017 of the State Health Society and also not paid Rs.150/- per operation to motivators. Further allegation is that the aforesaid NGO was also not verified by the Quality Assurance Committee. Counsel for the petitioner has further submitted that Dr. Bhuneshwar Singh and Shakuntala Kumari have already been granted anticipatory bail by the Court below itself.

Learned counsel for the Vigilance after looking into the case diary has submitted that although there is statement



made by Dr. Bhuneshwar Singh of having agreement with petitioner, Dr. Shushma Sinha, of performing operation in NGO Vimla Bandhayakaran and Parsuti Grih, but there is no supporting document to show that any operation was done by this petitioner. He has further submitted that there is no allegation against this petitioner of receiving any amount of payment with respect to the aforesaid operations.

In the facts and circumstances of the case, prayer of the petitioner of Cr. Misc.No.43599 of 2017 for grant of anticipatory bail is allowed. In the event of surrender/arrest of the petitioner, Dr. Shushma Sinha (Cr. Misc. No.43599 of 2017), within six weeks from today in connection with **Special Case No.07 of 2012 arising out of Bhabhua P.S. Case No.533 of 2011**, she shall be released on anticipatory bail on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the **Special Judge, Vigilance I, Patna**, subject to the conditions as laid down under Section 438(2) Cr. P. C. with further conditions: (1) bailors should be local having sufficient immovable property within the jurisdiction of the court concerned, (2) petitioner shall cooperate in the trial and shall be present on each and every date fixed by the court and absence on two consecutive dates without proper



and reasonable reason will automatically cancel bail bond of the petitioner and (3) if petitioner tampers with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioners.

So far as petitioner Sanjay Kumar Choudhary (Cr. Misc. No.41948 of 2017) is concerned, he is directed to deposit Rs.1,65,000/- (one lac sixty five thousand), which is alleged to have been received by him, within a period of four weeks from the date of receipt of copy of this order in the Govt. Treasury and, in that event, he shall be released on anticipatory bail by the Court below on the same sureties as well as terms and conditions as mentioned above in the case of another co-accused.

(Sanjay Priya, J)

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