

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No. 24928 of 2018

Arising Out of PS. Case No.-270 Year-2016 Thana- Kotwali District- Patna

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Lalkeshwar Prasad Singh @ Lalkeshwar Prasad, Son of Late Nanhak Singh,
Resident of Mohalla- Sardar Patel Nagar, Sandaapur Road, P.S.- Bahadurpur,
District- Patna.

... .. Petitioner

Versus

1. The State of Bihar Through Vigilance Investigation Bureau, Bihar Patna.
2. The Bihar School Examination Board, Patna.

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. R. B. Singhal, Sr.Adv. Mr. R. K. Singh, Adv. Mr. Abhimanyu Vatsa, Adv.
For the Opposite Party/s :		Mr. Lalit Kishore, Advocate General Mr. Ajay Mishra, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

5. 16-05-2018 Heard Sri R. B. Singhal, learned senior counsel

assisted by Sri R. K. Singh, learned counsel for the petitioner

and Sri Lalit Kishore, learned Advocate General assisted by Sri

Ajay Mishra, learned Addl. Public Prosecutor.

2. The petitioner's prayer for bail on merit was
rejected by a detailed order passed by this Court only on
11-10-2017, vide Cr. Misc. No. 3161 of 2017. At the time of
earlier hearing of his bail petition, no plea was taken on behalf
of the petitioner as to whether he desired bail on medical ground
or not. On merit, the prayer for bail was rejected. Against the
order of this Court, the petitioner preferred an appeal before the
Hon'ble Supreme Court, vide Special Leave to Appeal (Crl.)



No. 372 of 2018, however; before the Hon'ble Supreme Court, learned counsel for the petitioner sought permission to withdraw the special leave petition with liberty to move before the trial court for bail on medical ground. Thereafter, the Hon'ble Supreme Court permitted to withdraw the petition and liberty was granted to approach the court below for bail on medical ground. Meaning there that on merit, the prayer for bail of petitioner was not appreciated by the Hon'ble Supreme Court. Thereafter, the petitioner approached before the court below with a prayer to grant bail on medical ground. The Special Judge, Vigilance-I, Patna, vide its order dated 19-03-2018 passed in Special Case No. 32 of 2016, considering the fact that in the jail manual, there was already provision for providing medical aid, did not incline to release the petitioner on bail and dismissed his bail petition. Thereafter, again the petitioner approached this Court by filing the present petition.

3. Earlier twice, the case was adjourned. Firstly on 02-05-2018, due to non-appearance of Vigilance counsel, the case was adjourned and on the next occasion i.e. on 09-05-2018, on the prayer made by learned Advocate General, the case was adjourned. While adjourning the matter, this Court had already issued specific direction to the Jail Superintendent to act in strict



compliance with the provision under the Bihar Jail Manual as well as other Government instruction.

4. Sri Singhal, learned senior counsel for the petitioner tried to persuade the Court that petitioner may be enlarged on bail on medical ground, since petitioner is having 30% heart functioning and also blockage. Learned senior counsel for the petitioner has specifically referred to statement made in paragraph 23 to 28 of the petition, which are quoted hereinbelow:-

- “23. That in April 2016, petitioner again had chest pain and was advised angiography. He got this done at Max Hospital, New Delhi and the report revealed blockage in two arteries. Petitioner also had to undergo stress thallium test here and this too revealed left bundle branch block.
- 24. That the petitioner had taken opinions from other doctors also and he was advised stenting in two of the arteries where there was blockage.
- 25. That before the petitioner could again come to Delhi and get requisite surgery/stenting done, he was taken into custody and has been in jail ever since.
- 26. That even while at Beur Jail, he has been having chest pain etc. for which he has been sent to IGIC five times and has been advised various medication.
- 27. That recently in December, 2017, petitioner was referred to the PMCH, Patna for non healing ulcer on his right leg. While there, he was also referred to the cardiology department, as the petitioner had been suffering from chest pain. Several tests were conducted which confirmed that the petitioner now had a complete left bundle branch block. He was further advised to undergo angiography.
- 28. That again the petitioner was referred to IGIC for acute chest pain on 15.02.2018 and 17.02.2018.”



5. Sri Lalit Kishore, learned Advocate General, on instruction, submits that there is no such emergent situation and whatever required, the jail authority will take all steps in this regard. He submits that from time-to-time, on complaint, the petitioner was referred to the best heart institute in State of Bihar i.e. Indira Gandhi Institute of Cardiology under the Patna Medical College Hospital, Patna. Again, he was examined and he has returned back in prison. Sri Kishore undertakes that if any such emergent situation arises, the jail authority in accordance with the Jail Manual will take all steps for providing immediate medical assistance to the petitioner. On instruction, he further submits that in the case, trial has already commenced, since charge against accused persons has been framed. Sri Lalit Kishore further submits that petitioner has already been examined by the Medical Board, constituted by the Government, and the Government is taking every step for providing such immediate medical facility to the petitioner.

6. Besides hearing learned counsel for the parties, I have minutely examined the material on record. It is common knowledge that if an accused, having high position, is taken into custody, he starts filing petitions-and-petitions. This attitude has also been noticed by Hon'ble Supreme Court in a case reported



in 1995 (3) Criminal Law Journal 2935 (Ganesh Narayan Hegde Vs. S. Bangarappa and others). Ofcourse, in the said case, delay in conclusion of the trial was the subject matter, but fact remains that in this case also, if an accused is released on bail in a situation when trial has already commenced, there is every possibility that trial may be delayed. In a criminal case, first object is to see that trial is concluded at the earliest. Moreover, earlier while rejecting the prayer for bail of the petitioner, this Court had already observed to take all steps so that the trial may come to its logical end without unnecessary delay. Ofcourse, in the present case, bail has been sought for on medical ground, but it would be necessary to refer the accusation against the petitioner, which was earlier noticed by this Court. It would be better to incorporate earlier order passed by this Court on 11-10-2017 in Cr. Misc. No. 3161 of 2017, which is as follows:-

“Heard Sri Shashi Anugrah Narayan, learned Senior Counsel, assisted by Sri Bhola Kumar, learned counsel for the petitioner and Sri Lalit Kishore, learned Advocate General, Bihar, assisted by Sri Ajay Mishra, learned Addl. Public Prosecutor.

2. The sole petitioner, who is in custody in Special Case No.32/2016 (arising out of Kotwali P.S. Case No.270 of 2016) registered for the offence under Sections 409, 420,465, 467, 468, 471, 188, 201, 212 and 120B of the Indian Penal Code and Sections 8,9,13(i)(c) (d)(e) read with Section 13(2) of Prevention of Corruption Act, 1988 has prayed for grant of bail.

3. The petitioner, at the relevant time, was



Chairman of the Bihar School Examination Board, Patna. An F.I.R. was lodged on the basis of written report submitted by the Director, Secondary Education, Bihar, Patna, in which it was alleged that in the Intermediate Examination, 2016 fraudulently unmeritorious candidates were shown toppers and from one college, namely, Vishundeo Rai College, Kiratpur, Rajaram, Bhagwanpur, Vaishali out of 10 toppers, four toppers were of the said college. In the F.I.R. all four toppers were made accused. Besides said toppers, the person, who was managing Vishundeo Rai College, Vaishali, and the Centre Superintendent of Balak High School, Rajendra Nagar, Patna were also made accused. It was noticed that after examination of Intermediate of the year 2016, the evaluation centre of copies in respect of Vaishali was fixed to Bhabhua and Ara. However, in deep rooted conspiracy only evaluation of answer sheets of the centre of Vishundeo Rai College, Vaishali was shifted to Balak High School, Rajendra Nagar, Patna. During preliminary inquiry, it was noticed that by committing forgery and fraud, candidates from the said school were shown toppers both in Arts and Science. During investigation, this fact came to fore that Vishundeo Rai College, Vaishali was being run by the Principal, namely, Amit Kumar @ Bachcha Rai. In the said examination, even before publication of the result, the daughter of Bachcha Rai, namely, Shalini Rai was shown as topper. During investigation, it also transpired that the petitioner being Chairman of the Bihar School Examination Board was instrumental in getting the centre shifted at Balak High School, Rajendra Nagar, Patna. During investigation, the accusations against number of accused persons were found true and, as such, two chargesheets were submitted in the present case. The petitioner after registration of the F.I.R. was arrested on 21.06.2016 and he is continuing in jail since then.

4. Sri Shashi Anugrah Narayan, learned Senior Counsel pressing the bail has argued that save and except inadmissible evidence, there is no material to connect the petitioner. He highlighted that the petitioner is having clean antecedent. Even during investigation, no recovery was affected from his possession or from the house of the petitioner. Only the evidence is hearsay and no direct or indirect material was collected against the petitioner and, as such, the petitioner has falsely been chargesheeted in the present case. It has been argued that the petitioner is languishing in jail since long without trial. He has argued that the law is settled on the point that bail is rule and rejection is exception. However, ignoring all



these principles, the petitioner's prayer for bail was rejected by the Vigilance Court. Learned Senior Counsel has also placed reliance on the Judgment of the Hon'ble Apex Court, reported in (2012) 1 SCC 40; *Sanjay Chandra Vs. Central Bureau of Investigation*. He has specifically referred to paragraph nos. 14,21 to 24, 27, 36, 40, 44 and 45 of the said Judgment to impress upon the Court that the petitioner, in view of law laid down by the Apex Court, is entitled to be extended the privilege of bail. He has also referred to the Judgment of the Hon'ble Apex Court in a case of the co-accused, namely, Amit Kumar @ Bacha Rai. Copy of the order of the Hon'ble Supreme Court dated 20th April,2017 passed in Cr.Appeal No.767 of 2017 has been brought on record as Annexure-7 to the supplementary affidavit. Sri Shashi Anugrah Narayan, learned Senior Counsel appearing on behalf of the petitioner has argued that the petitioner's case is distinguishable from the case of Bachcha Rai. It has been argued that number of other co-accused persons have been granted bail either by the court below or by this Court and on the principle of parity also, it has been argued that the petitioner deserves to be released on bail.

5. Sri Lalit Kishore, learned Advocate General has vehemently opposed the prayer for grant of bail to the petitioner. At the very outset, it was argued that it is true that the petitioner is in custody since June,2016 but the prosecution is taking every step for early commencement and conclusion of the trial. However, the accused persons, who are about 56 in number, are intentionally delaying the commencement of trial. He submits that in the case, number of dates were fixed for framing of charge. Even yesterday i.e. 10.10.2017, it was the date fixed for charge, but at the last moment one of the accused persons filed a petition for discharge and this was the reason that charge is being delayed. It has also been argued that during investigation, sufficient materials were collected to show that the petitioner, in the capacity of the Chairman of the Bihar School Examination Board, was one of the main conspirators for entire episode. By way of referring to number of paragraphs of the case diary, it has been argued that the petitioner was in regular touch with the co-accused Amit Kumar @ Bachcha Rai. Besides others, the bodyguard of the petitioner in his statement recorded under Section 161 of the Code of Criminal Procedure has categorically stated that the petitioner was in regular touch with Bachcha Rai and in between Bachcha Rai and the petitioner, there was money transaction also. By way of



referring to paragraph-206 of the case diary, it has been argued that there is one witness, in whose presence transaction was made in between the petitioner and Bachcha Rai. Regarding establishing connection of the petitioner with Bachcha Rai, it has been argued that telephone detail i.e. C.D.R. was collected during course of investigation, which categorically establishes that the petitioner and Bachcha Rai were in regular touch even on mobile also. Besides this, he has also referred to number of paragraphs of the case diary to show that the petitioner was one of the main conspirators.

6. Sri Lalit Kishore, learned Advocate General has further argued that even on the principle of parity the petitioner does not deserve lenient approach. According to him, the prayer for bail of the most of the conspirators have been rejected by this Court. It has been argued that it is true that number of accused persons have also been granted bail, but those persons were either teachers or Class-III and Class-IV employees of the Board and School. Even the prayer for bail of the Principal of Balak High School, Rajendra Nagar, Patna has been rejected. It has been argued that it is not only allegation that the petitioner was instrumental in shifting the evaluation centre to Balak High School, Rajendra Nagar, but during investigation, evidence has come that on oral instruction after evaluation in the Balak High School, copies of answer-sheets were summoned by the petitioner and, thereafter, such offences were committed.

7. Besides hearing learned counsel for the parties, I have also perused the materials on record including the Judgment of the Hon'ble Apex Court passed in the case of co-accused, namely, Amit Kumar @ Bachcha Rai. On going through Annexure-7 i.e. the order dated 20.04.2017 passed by the Hon'ble Apex Court, it is evident that co-accused Bachcha Rai was granted bail by a Bench of this Court, which was assailed by the State before the Apex Court. Even before the Hon'ble Supreme Court reliance was placed by learned counsel for accused Bachcha Rai on Sanjay Chandra's case (*supra*), but the Hon'ble Apex Court has distinguished the case of Sanjay Chandra with the nature of the present case. This distinction has been made in paragraph-13 of the said Judgment. It would be appropriate to quote paragraph-13 of the said Judgment, which is as follows:

"13. We are of the considered opinion that the case of Sanjay Chandra (supra), as relied



upon by learned counsel for respondent, is distinguishable from the case at hand as the charges in that case carried a maximum punishment for a term which may extend to seven years. In the present case, chargesheet has been submitted, inter alia, for the offences under section 409, 465, 467, 468, 471, 188, 201, 212 and 120B of Indian Penal Code, 1860 and Section 8, 9, 13(1)(c)/(d) read with 13(2) of Prevention of Corruption Act, 1988. Therefore the case of Sanjay Chandra (supra) provides no assistance for the respondent herein.”

8. Besides this, the submission made by learned Senior Counsel appearing on behalf of the petitioner regarding the bail appears to be attractive, but in view of facts and circumstances of the present case, same principle may not apply in the present case, particularly in view of specific observation given by the Hon’ble Apex Court in the case of co-accused, namely, Bachcha Rai. On this principle, it was noticed by the Hon’ble Apex Court that for grant of bail, there cannot be a straight jacket formula and the case is to be examined on the facts and circumstances of the present case as well as considering the seriousness of the accusation but fact remains that in the present case, deserving candidates were prevented from securing top position in the examination. Besides this, this Court can take judicial notice of the fact that since this episode, which has been termed as ‘topper scam’ has tarnished the image of education system of State of Bihar in all over the country. This Court may not shut its eyes on seriousness of the accusation.

9. Considering the seriousness of the accusation as well as the fact that almost in similar circumstances, the bail granted to one of the co-accused by a Bench of this Court was set aside by the Hon’ble Supreme Court, this Court may not prefer to extend the privilege of bail to the petitioner. Accordingly, the prayer for bail of the petitioner stands rejected.

10. However, considering the fact that the petitioner is in jail since June, 2016, it is observed that the learned trial court as well as the prosecution may take all steps, so that the trial may commence and come to its logical end without unnecessary delay.”

7. Since on instruction, it was submitted by learned

Advocate General that jail authority is taking all sincere effort to



provide immediate medical assistance, certainly, on the plea of medical ground, the petitioner may not be extended the privilege of bail. In the present case, a plea has been taken that the petitioner is ailing since long i.e. since 2002. Had it been a situation, then there was every possibility that on last occasion, while the petitioner had approached this Court for grant of bail, on his behalf, submission ought had to be advanced regarding his ailment, but no such plea was taken. Meaning thereby that firstly, the petitioner tried to be bailed out on the basis of merit, not on medical ground, however; since he failed to get bail on merit up-to the Supreme Court, now on the medical ground, the present petition has been filed for being released on bail.

8. In the Bihar Jail Manual Part II Chapter 30, there is specific provision for dealing with the medical facilities to the prisoners. Besides this, as submitted by learned Advocate General, there is other executive instructions also dealing with the subject.

9. Considering the fact that trial has already commenced; submission made by learned Advocate General on instruction that presently, there is no such emergent situation as well as undertaking given by learned Advocate General that as and when required, immediate medical facilities will be



provided to the petitioner in accordance with law, I do not find any ground to pass favourable order.

10. Since the petitioner has sought bail on medical ground, it goes without saying that the jail authority will take immediate step(s) to provide all medical facilities, as and when required, to the petitioner strictly in accordance with law.

11. The petition, filed in the garb of being released on bail on medical ground, stands dismissed.

(Rakesh Kumar, J.)

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