

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.42336 of 2018**

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1. Harihar Nath Jha, Son of Late Brijbansi Jha @ Brajbanshi Jha, Resident of Village- Mahmadi P.S.- Patahi, District- East Champaran at Motihari, presently residing at Flat No.- 402, Dev Kunj Apartment, Laxmi Narayan Path, North S.K. Puri, P.S. S.K. Puri, Town and District- Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. The Vigilance, Investigating Bureau, Bihar, Patna.

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Ansul  
Mrs. Archana  
Mrs. Sagarika Vidyarthi  
Mrs. Jayanti  
For the Opposite Party/s : Mr. Ajay Mishra APP

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA**  
**ORAL ORDER**

5      29-08-2018                      Supplementary affidavit is filed on behalf of the petitioner. The copy of supplementary affidavit has already been furnished to the learned Additional Public Prosecutor for the State. Let it be kept on record.

Heard learned counsel appearing for the petitioner as well as learned Additional Public Prosecutor for the State.

The petitioner is facing trial before Sub-Judge Vigilance 1<sup>st</sup> Patna in Special Case No. 32 of 2016 for the offences punishable under section 409, 420, 465, 467, 468, 471, 188, 201, 212, 120B of the Indian Penal Code and 8/9/13(1)(e) read with section 13(2) of Prevention of Corruption Act.



Earlier, the prayer for bail of the petitioner was twice rejected by this Court and while rejecting the bail of the petitioner vide order dated 8.12.2016, this court gave liberty to the petitioner to renew his prayer for bail if the prosecution could not conclude its evidence within four months from the date of receipt/production of order dated 8.12.2016 passed in Cr. Misc. No. 39141 of 2016. The petitioner again approached this Court for bail by filing Cr. Misc.No. 21812 of 2017 but his Court again declined to release the petitioner on bail vide order dated 7.02.2018 and gave liberty to the petitioner to renew his prayer for bail before the learned trial court itself, if his trial is not conclude within four months and, furthermore, this Court directed the trial court vide order dated 07.02.2018 to take the trial of the petitioner on day to day basis. However, the trial court vide its letter no. 483 dated 03.07.2018 reported that charge against the petitioner and other accused could be framed on 24.01.2018 and in spite of issuance of summons and other processes, the prosecution could examined only one witness. Admittedly, the prosecution has proposed 54 prosecution witnesses in charge sheet to prove the charges leveled against the petitioner and other accused. Therefore, from the above stated facts, it is obvious, that the trial of the petitioner is not likely to be concluded in near future because the prosecution has to be



examined more than 50 prosecution witnesses as yet.

Learned counsel appearing for the petitioner submits that the petitioner was Secretary of Bihar School Examination Board at the relevant time and the prosecution has altogether brought four allegations against the petitioner which has been averred at para-12 of the supplementary affidavit. He further submits that similarly, the allegations leveled against the other accused have also been averred in the aforesaid paragraph of supplementary affidavit but on comparing the allegations of all the accused with the allegations of the petitioner, it is obvious that the allegations leveled against Amit Kumar @ Bachcha Roy, Lalkeshwar Prasad are more serious than the allegations of the petitioner because the allegations leveled against the petitioner are of general in nature such as the petitioner signed the documents of the meeting held for grant of affiliation to the colleges, issuances of incomplete admit cards under the signature of the petitioner in respect of F.I.R named accused, keeping the answer sheets of the students of Bishundev Rai College, which was brought by the Chairman without any entry, prior to publication of the result was in touch with Usha Sinha at mobile phone. He further submits that being Secretary of Bihar School Examination Board, the petitioner is duty bound to sign the minutes of the meeting for grant of



affiliation of colleges but the prosecution has not brought any document to show that any grant of affiliation to the colleges was issued by the petitioner under his signature. He further submits that issuance of incomplete admit cards under the signature of the petitioner is concerned, admittedly, the petitioner was Secretary of the Board and his Digital signature was used for issuance of admit cards and, therefore, it is obvious that the petitioner had no occasion to see each and every admit cards nor the admit card were manually signed. He further submits that so far as keeping of the answer sheets of students of Bishundev Rai College is concerned, according to the prosecution case, the aforesaid answer sheets were brought by the, then, Chairman Lalkeshwar Prasad Sinha and petitioner being Secretary of the Board, had no authority to challenge the power of chairman and, therefore, he had no option except to keep the answer sheets. He further submits that the concerned rules of Bihar School Examination Board did not contain any provision which empowers the Secretary to challenge or to question the authority and order of Chairman of the board and, therefore, even if, it assumed, that it was petitioner, who kept the answer sheets of the students, then also, he did the aforesaid act in discharge of his official duty. He further submits that so far as the 4<sup>th</sup> allegation is concerned, admittedly, co-



accused Usha Sinha is the wife of co-accused Lalkeshwar Prasad Sinha and, therefore, it is quite natural that petitioner being subordinate to Mr. Lalkeshwar Sinha had telephonic talk with Usha Sinha. Moreover, there is no allegation of financial irregularity against the petitioner nor prosecution has made any allegation of misappropriation of a single penny against the petitioner.

Learned counsel for the petitioner further submits that in the case of **Sanjay Chandra v/s Central Bureau of Investigation**, reported in **A.I.R 2012 SC 830**, the Apex Court at para-26 of the aforesaid judgment has held that if there is no possibility of conclusion of trial of under trial prisoner within the reasonable time, it would not be in the interest of justice to keep the accused for indefinite period. He further submits that in the aforesaid decision, the **Hon'ble Apex Court relied upon decision of State of Kerala v/s Raneef (2011)1 SC cases 784**. In the back drop of aforesaid decision, the learned counsel for the petitioner submits that in the present case also, there is no possibility of conclusion of trial of the petitioner within the reasonable period of time and, therefore, petitioner should be released on bail as he is languishing in jail custody since 27.06.2016 i.e. for more than two years.



On the other hand, learned Additional Public Prosecutor for the State, vehemently, opposed the prayer for bail submitting that the Hon'ble Apex Court, while cancelling the bail granted to accused Amit Kumar @ Bachcha Roy by a learned Single Judge of this Court, observed that “socio-economic offences constitute a class apart and need to be visited with a different approach in the matter of bail. Usually socio-economic offence has deep rooted conspiracies affecting the moral fiber of the society and causing irreparable harm, needs to be considered seriously”.

Learned Additional Public Prosecutor for the State further submits that socio-economic offence is always committed by a group of people and that offence cannot be committed by an individual. He further submits that in the present case, the petitioner in connivance with other accused committed the alleged crime and, therefore, the allegation leveled against the petitioner and others cannot be seemed in isolation. He further submits that **Sanjay Chandra Case ( supra)** was distinguished by the Apex. Court while cancelling the bail application of accused Amit Kumar @ Bachcha Roy vide order dated 20.04.2017 passed in Cr, Misc. No. 767 of 2017 and, therefore, the principle laid down in the above stated **Sanjay Chandra case ( Supra)** is not applicable in



the present case. He further submits that in view of the allegations leveled against the petitioner and other accused as well as taking note of gravity of the offence, the petitioner does not deserve the privilege of bail.

Having heard the rival contentions of the parties, I went through the record. It is an admitted position that petitioner is languishing in jail custody for more than two years and the trial of the petitioner is still on infancy stage as up till now only one prosecution witnesses could be examined. It is further admitted position that when the bail prayer of the petitioner was rejected by this Court on 08.12.2016 in Cr. Misc. No. 39141 of 2016, this Court granted liberty to the petitioner to renew his prayer for bail, if the prosecution fails to conclude its evidence within four months. However, even after passing of two years from the date of the aforesaid order, the prosecution could not succeed to produce its complete evidence before the trial court therefore, again, this court while rejecting the bail prayer of the petitioner vide order dated 07.02.2018 passed in Cr. Misc. 21812 of 2017 directed the trial court to conclude the trial of the petitioner within four months and liberty was given to the petitioner to renew his prayer for bail, if the trial is not concluded within the above stated period. However, this Court to facilitate the trial court granted him liberty



to take the trial of the petitioner on day to day basis.

No doubt, petitioner was working as Secretary of Bihar School Examination Board at the relevant time and there is allegation against him that he also entered into conspiracy with other accused in committing the present crime which is very heinous crime and comes under the purview of socio-economic offence but no one can be detained in judicial custody for indefinite period without substantive progress in his trial.

In the present case, it is obvious that there is no possibility of conclusion of trial of the petitioner in near future and it is also obvious from perusal of order dated 20.04.2017 passed by Hon'ble Apex Court in Cr. Misc. No. 767 of 2017 that the Hon'ble Apex Court while cancelling the bail of accused Amit Kumar @ Bachcha Roy took note of this fact that investigation of the case was pending against some co-accused persons and that was the reason at Para-16 of the aforesaid judgment, the Hon'ble Apex Court mentioned this fact that the bail of co-accused Amit Kumar @ Bachcha Roy was being cancelled at the present stage. Furthermore, I find that mostly the prosecution evidence is based on documentary evidence and there is nothing on the record to show that if the petitioner is released on bail, there is apprehension of tempering with the evidence.



Therefore, in the aforesaid circumstance, I am of the opinion that, let the petitioner be released on bail on furnishing bail bonds of Rs. 50,000/- (Fifty Thousand) with two sureties of the like amount each to the satisfaction of Special Judge, Vigilance 1<sup>st</sup> Patna in connection with Special Case No. 32 of 2016 arising out of Kotwali P.S.Case No. 270 of 2016, subject to the condition that he shall appear before the trial court on each and every date in person for the period of six months and if he fails to do so on two consecutive dates without any reasonable cause, the trial court shall be at liberty to cancel the bail bonds of the petitioner after giving proper opportunity of hearing to him.

**(Hemant Kumar Srivastava, J)**

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