

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49512 of 2018

Arising Out of PS. Case No.-81 Year-2017 Thana- VIGILANCE District- Patna

Sarad Kumar Jha, S/o Late Nirmal Chandra Jha, R/o Village Jajuar P.S. Katra District Muzaffarpur at present R/o Nideshak IIIM Ltd. 305 Pushpanjali appt. Boring Road, P.S. S.K. Puri, Dist.- Patna.

... .. Petitioner/s

Versus

The State of Bihar, through the Superintendent of Police, Vigilance, Govt. of Bihar, Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajit Kumar, Adv

For the Opposite Party/s : Mr. Arvind Kumar S.C of Vigilance.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR

ORAL ORDER

4 25-08-2018 Heard learned counsel for petitioner and learned counsel for the Vigilance.

Petitioner seeks regular bail in **Special Case No. 343 of 2017 arising out of Vigilance P.S. Case No. 81 of 2017** registered for the offence punishable under Sections 406, 420, 409, 467, 471, 477A, 468 and 120B of the Indian Penal Code and Section 13(2) r/w 13(1) (d) of the PC Act.

FIR has been instituted by Vigilance Bureau on the basis of preliminary investigation made by it with respect to complaints, regarding financial and procedural irregularities committed during allotting work order for Microsoft Office Trade Training of candidates belonging to Scheduled Castes and Scheduled Tribes at the cost of State. Preliminary investigation



was primarily based on the objection raised by Audit team while carrying audit of office of Mahadalit Vikas Mission. Ten persons have been made accused in the FIR including petitioner and other three accused are former CEO of Mission who are senior bureaucrats under State Government and were posted as CEO of Mission from 2011 to 2016. Allegation against petitioner and 3 other accused is of entering into conspiracy to favour petitioner in awarding the Work Order without inviting tender and making excess payment to petitioner in connivance with each other.

The grant of regular bail to the petitioner is being opposed by Mr. Arvind Kumar, standing counsel for the Vigilance Department on the basis of written instruction received from Vigilance Department and a copy of which has been provided to the Court and same forms part of bail petitioner also and it is submitted that sufficient materials has come during investigation and as such petitioner does not deserve to be enlarged on bail for following reasons:-

(i) Shri Ram New Horizon (SRNH) was selected and agreement was entered between Bihar Mahadalit Vikas Mission (BMVM) on 23.09.2011 to impart training to 3445 candidates and SRNH gave training to 3445 candidates and agreement was



executed with IIIM Ltd. (petitioner) on 23.11.2011 for conducting examination and certification of trainees without inviting any tender by the order of CEO Sri R.M. Parmar @ Rs. 2000/- per student.

(ii) Audit objection was raised by Audit team, who conducted audit of the office from 15.04.2013 to 29.04.2013 which was perused by the Vigilance Team and the audit team made objection in respect of selection and payment made to IIIM Ltd. without inviting any tender and Rs. 62.50 Lacs was paid.

(iii) BMVM thereafter entered into two separate agreements with IIIM Ltd on 20.11.2013, one in respect of Dashrath Manjhi Kausal Vikas Yojana and second in respect of Central Government sponsored scheme for conducting examination and certification of Microsoft Office Trade. Under first agreement Rs. 1800/- per candidate total 9120 candidates and amount of Rs. 1,64,16,000/- was finalized for payment which was to be completed by 18.11.2014. In second agreement 6080 candidates were to be trained on the agreed cost of Rs.



1,09,44,000/- which was to be completed by 18.11.2014. Work order was issued by the then CEO, S.M. Raju however subsequent agreement was entered by CEO R.M. Parmar @ Rs. 2000/- per candidate which was Rs. 200/- more than the agreed amount, however, subsequently it was reduced to Rs. 1800/- causing loss of Rs. 10 Lacs.

(iv) Petitioner on 01.07.2013 received Rs. 18,30,801/- in terms of agreement in which Rs. 7,21,001/- was for payment of Service Tax but receipt of payment of Service Tax has not been submitted by the petitioner in the office of BMVM.

(v) Petitioner in connivance with Government employees on the basis of fake Mail encashed Rs. 24,88,501/- on 21.05.2015. During investigation on the basis of records maintained in the office of BMVM the name of the candidates who received training were physically verified in 5 districts i.e. Nalanda, Nawada, Purnea, Kishanganj and Katihar and in said verification 6 irregularities were found in Purnea district, 4 in Kishanganj district and 6 in Katihar district, who either did not



receive any training nor was given any certificate. Ritu Devi who is said to have received training died on 25.02.2012 during training period but payment against her name has been encashed by the petitioner.

(vi) From the records of BMVM, it appears that SRNH had given training to 9573 candidates in two phases and IIIM Ltd. provided study material to 5000 candidates in first phase and against 4573 candidates only 15200 study materials were made available in which 10627 study materials are rotting in the training Centre. In respect of 15200 study materials in connivance with K.P. Ramaiah IAS the then C.E.O. and Smt. Devyani Kar, the then State Programme Officer in one day on 26.02.2014 cheques were issued two days before his voluntary retirement and he made payment of Rs. 2,24,76,787/- to IIIM Ltd. for payment against 10000 study materials which were lying in the warehouse of IIIM Ltd.

(vii) In order to facilitate easy payment petitioner developed close relation with State Programme Officer Smt. Devyani Kar and made his



husband Jai Deep as head strategic Project Officer for the period from 11.12.2013 to 15.04.2015 as a result of which petitioner was able to get Rs. 3,30,36,289/- amount for conduct of examination and certification.

(viii) During investigation it was also revealed that Work Order was issued for supply of Radio Transistor to two firms Santosh Radios and Technologic Infotech Private Ltd. in which also petitioner was Director.

It has been submitted by the learned counsel for the petitioner that he is innocent and has been falsely implicated in this case. Agreement was entered with IIIM Ltd. which is a company registered under the Companies Act 1956 and petitioner is one of the Director of the Company but has been made accused in personal capacity. Unless and until Company is made accused its Director cannot be made accused. Payments were made in the account of the Company and not in the account of the petitioner.

Company is involved in providing skill development training and authorized partner of Microsoft Corporation, USA. It is authorized by Microsoft to conduct examination and



certification on their behalf.

BMVM had approached the Microsoft to conduct examination and certification but the Microsoft informed that Microsoft makes the software but for the work of examination and certification there are resellers of Microsoft and IIIM Ltd. is one of the reseller of the Microsoft and thereafter BMVM had approached IIIM Ltd. for the work of examination and certification.

It has been submitted that Company has very high credentials in the market and at present it is executing several works in 24 States and also for the Central Government.

It has been submitted that FIR has been lodged against 10 accused and similar allegations have been made against three senior bureaucrats of the State Government who were posted as CEO in the BMVM at the relevant time and are now occupying high positions in the State Government but Vigilance Department has taken no steps to obtain sanction for their prosecution or to arrest them, although anticipatory bail of one of the said accused has been rejected whereas petitioner who was co-operating in the investigation and appeared on each and every dates is the sole accused who has been arrested in this case.



It has been further submitted that even according to BMVM only 70 per cent of payment has been made to the petitioner and a huge amount is still due for which on the request of petitioner Hon'ble Patna High Court has appointed retired Judge of Patna High Court as Arbitrator and claim and counter claim with respect to under payment over payment is pending before the Arbitrator.

Considering the aforesaid facts and circumstances of the case, let the petitioner named above be released on bail on furnishing bail bond of Rs. 20,000/- with two sureties of the like amount each to the satisfaction of learned **Special Judge, Vigilance-1st , Patna**, in connection with **Special Case No. 343 of 2017 arising out of Vigilance P.S. Case No. 81 of 2017**, subject to the following conditions:-

(i) One of the bailor should be the wife of the petitioner and the other bailor should be local having sufficient immovable property within the jurisdiction of the concerned court.

(ii) Petitioner should co-operate with the investigating agency and should appear before the I.O. whenever required by him during investigation.

(iii) Petitioner should appear before the Special Court after submission of chargesheet on each and every date and his absence on two



consecutive dates without any sufficient and valid reason, the Special Court shall be at liberty to cancel his bail bonds.

(iv) Petitioner should surrender his passport in the Special Court and should not leave the Country without permission of Special Court.

(S. Kumar, J)

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