

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48213 of 2019

Arising Out of PS. Case No.-105 Year-2016 Thana- ISHAKCHAK District- Bhagalpur

=====

KUMAR GAURAV @ KUMAR GAURAV SINGH S/o Sri Satyapal Singh
@ Satyapal Resident of- 351/1, 28, Civil Lines, Roorkee, P.S.- Civil Lines,
District- Haridwar (Uttarakhand)

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Bishwajeet Singh

For the Opposite Party/s : Mr.Chandra Sen Prasad Singh

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

24 02-08-2019 Heard learned counsel for the petitioner and learned APP
for the State.

The petitioner is apprehending arrest in a case registered
for the offences punishable under Sections 406, 420, 419, 467,
468, 471 and 120B/34 of the Indian Penal Code.

Initially, the prosecution case got initiated with filing of
Complaint Case No.382 of 2016 by Rajesh Mishra, which
subsequently came to be registered as Ishakchak (Tilkamanjhi)
P.S Case No.105 of 2016, after the complaint being transferred
under Section 156(3) of the Code of Criminal Procedure to the
police.

The prosecution case is that the informant runs a
consultancy agency for getting the students admitted in different



educational courses under the name and style of M/s P.R.M. Education Pvt. Ltd. at Bhagalpur. The informant claimed that he came in contact with accused persons through advertisement. Consequently, co-accused Vipul Kumar, being the Director of C2C Consultancy Services having its office at Dehradun, persuaded the informant to facilitate the admission in B.Ed. Courses in Asha Academy, run by the petitioner. The informant deposited 74 applications along with admission charges and fee for 2014-15 session and paid Rupees Forty Two Lacs Thirty Thousand through cheque and Rupees Three Lacs Seventy Four Thousand in cash to co-accused Vipul Kumar. It is alleged that on instruction of the petitioner, co-accused Neelam Saini issued signed I.D. in the name of different students.

It is further alleged by the informant that when he did not receive information with regard to the examination then he made contact with co-accused Vipul Kumar who told that the University has cancelled the examination. However, twenty students have been authorized to be admitted in the Asha Academy being run by this petitioner.

It is submitted by learned counsel for the petitioner that all the payments were made by the informant to co-accused Vipul Kumar and no payment was received by the petitioner and Asha



Academy of the petitioner received course fee only of twenty applicants through C2C Consultancy Services of co-accused Vipul Kumar and their results were published. Hence, no case is made out against the petitioner. More over, co-accused Vipul Kumar has been granted anticipatory bail by a co-ordinate Bench of this Court vide order dated 9.5.2019 passed in Criminal Miscellaneous No. 13681 of 2019 subject to the condition that the process under Section 82 of the Code of Criminal Procedure has not been exhausted and it is not in dispute that co-accused Vipul Kumar has consequently been released on anticipatory bail. There is no proof with regard to payment by any student or the informant to the petitioner.

It is submitted by learned counsel for the informant that the petitioner in connivance with co-accused Vipul Kumar, misappropriated the amount and for twenty students he charged fee even though it was charged by C2C Consultancy Services.

Having heard learned counsel for the parties, this is not in dispute that the informant transferred the alleged amount to co-accused Vipul Kumar or to his consultancy namely C2C and there is nothing on record to suggest that co-accused Vipul Kumar authorized the petitioner to take admission. Hence, the



thrust of accusation is against co-accused Vipul Kumar who has been granted anticipatory bail by a bench of this Court.

So far as the question of issuance of process under Section 82 of the Code of Criminal Procedure is concerned, the same has not been found validly executed and consequently co-accused Vipul Kumar has been granted bail. It is relevant to state here that anticipatory bail application is not maintainable when warrant has been issued and the accused is absconding or concealing himself in order to avoid the execution of warrant and is declared proclaimed offender in terms of Section 82 of the Cr.P.C. There is nothing on record to suggest that the petitioner is proclaimed offender rather there is specific statement made in paragraph 16 of the petition that the investigation is still going on, no warrant or process has been served upon the petitioner. Paragraph 16 of the petition reads as follows:

16. That it is stated that till date investigation is going on. It is stated that no warrant or process u / s 82 has been served on petitioner.”

In the circumstances, since it is well settled law that proclamation under Section 82 of the Cr.P.C. cannot be issued on mere asking of the police officer as Section 82 of the Cr.P.C.



provides that if any Court has reason to believe (whether after taking evidence or not) that any person, against whom a warrant has been issued by it, has absconded or is concealing himself so that such warrant cannot be executed, such Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than thirty days from the date of publishing such proclamation and if it has been found in the case of main accused Vipul Kumar that the proclamation has not been made validly, as a result he was granted and released on anticipatory bail, coupled with the statement made in paragraph 16 of the petition that process has never been served upon the petitioner, let the above named petitioner be released on anticipatory bail, in the event of arrest or surrender before the learned Court below within a period of 12 weeks from today, on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned CJM, Bhagalpur in connection with Ishakchak (Tilkamanjhi) P.S. Case No.105 of 2016, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

Ashwini/-Anil/

(Dinesh Kumar Singh, J)

U		T	
---	--	---	--

