

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59586 of 2019

Arising Out of PS. Case No.-227 Year-2019 Thana- SURSAND District- Sitamarhi

MAHESH KUMAR CHOUDHARY Son of Late Rabindra Choudhary
Resident of Village and P.O-Barari Behta, P.S.-Chourauth, District-Sitamarhi.
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 64621 of 2019

Arising Out of PS. Case No.-227 Year-2019 Thana- SURSAND District- Sitamarhi

MAHESH CHANDRA PRASAD Son of Late Sudhir Chandra Prasad
Resident of Village-Runni, P.S.-Runni Saidpur, District-Sitamarhi.
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 59586 of 2019)

For the Petitioner/s : Mr. N. K. Agrawal, Sr. Adv.
Mr. Ajay Kumar Tiwari

For the State : Mr. Parmeshwar Mehta

For Zila Parishad : Mr. Ranjeet Kumar Pandey

(In CRIMINAL MISCELLANEOUS No. 64621 of 2019)

For the Petitioner/s : Mr. Uday Kumar

For the State : Mr. Parmeshwar Mehta

For Zila Parishad : Mr. Ranjeet Kumar Pandey

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 25-10-2019 Since both these application arise out of the same

Sursand Police Station Case No. 227 of 2019, with the consent

of the parties, both these applications are heard together and are

being disposed of by this common order.

Heard learned Counsel for the parties concerned.

This application, for grant of anticipatory bail, arises

out of Sursand Police Station Case No. 227 of 2019, disclosing



offences under Sections 409/34 of the Indian Penal Code.

The allegation against the petitioners, as per the First Information Report, is that the work of construction of drainage and PCC road was allotted to the petitioners. The value of the work was Rs. 4,58,218/- and upon measurement of the work, it was found in the measurement book that work of Rs. 1,89,774/- has been shown excess from the actual work done and the said amount was misappropriated by the petitioners. The work of Scheme No. 247/15-16 was started in December, 2015 to January, 2016 and on 04.06.2017, the measurement book was prepared and after two years, an enquiry was conducted in the year 2019 and on that basis, the present case has been instituted.

Mr. N. K. Agrawal, learned Senior Counsel, appearing for the petitioner in Criminal Misc. No. 59586 of 2019, submits that the petitioner, being the Assistant Engineer, was allotted the work of construction of drainage and PCC road under the said scheme and after completion of the work, the petitioner submitted the bills for the work done on the basis of measurement book and according to the petitioner, the work to the tune of Rs. 4,58,218/- was completed, but amount of Rs. 2,70,400/- was only paid by the Department and a sum of Rs. 1,87,818/- is still to be paid. He further submits that upon



enquiry, after two years, the measurement was again done and according to the new measurement report, difference in the work done to the tune of Rs. 1,89,774/- was found by the measurement team vis-a-vis the measurement book submitted by the petitioner earlier. He further submits that the work in question was relating to construction of drainage and PCC road and re-measurement after a lapse of two years may not give the correct picture inasmuch as the work was completed by the petitioner in the year 2017 itself and measurement was submitted, but at that point of time, nobody protested the finding recorded in the measurement book. He further submits that without prejudice to the same, the petitioner offers to refund a difference in the work done to the tune of Rs. 1,89,774/- as has been found by the authority and a sum of Rs. 1,87,818/- is still due to be paid to the petitioner by the Zila Parishad. The petitioner is ready to forego the said amount of Rs. 1,87,818/-, which may be adjusted towards the difference in the work done to the tune of Rs. 1,89,774/- and further a sum of Rs. 2,000/- shall be paid by the petitioners in the account of the Zila Parishad.

Mr. Uday Kumar, learned Counsel appearing on behalf of the petitioner in Criminal Misc. No. 64621 of 2019,



adopts the same argument advanced by learned Senior Counsel.

On the other hand, learned Counsel appearing on behalf of the Zila Parishad vehemently opposes the prayer for anticipatory bail and submits that the petitioners have committed irregularities in the construction work and being the District Engineer, he himself allotted the work in the year 2015 and in support of the same, he produced the copies of show cause issued to the petitioners in 2018 onwards. He further submits that the petitioner of Criminal Misc. No. 59586 of 2019, being the executing agency, also recorded the interim measurement as well as the final measurement.

In reply, learned Senior Counsel submits that in the year 2015, no instruction of this kind was issued by the authority and after approval of the work by the DDC, the petitioner, being the District Engineer, allotted the work in question and co-incidentally, he was working as Assistant Engineer also at that point of time and there was no intention to misappropriate the amount in question. He further submits that the measurement of the work done was taken initially by the Junior Engineer and thereafter he finalized the measurement book.

Having regard to the submissions made on behalf of



the parties and taking into consideration the fact that the petitioners are ready to forego the said amount of Rs. 1,87,818/- and further a sum of Rs. 2,000/- shall be paid by the petitioners in the account of the Zila Parishad, as the difference in the work done, I am inclined to grant the petitioners privilege of anticipatory bail.

These applications are, accordingly, allowed.

Let the petitioners, above named, in the event of their arrest or surrender before the Court below within four weeks, be released on bail on furnishing bail bonds of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate, 1st Class, Pupari, Sitamarhi, in connection with Sursand Police Station Case No. 227 of 2018, subject to the conditions (i) laid down under Section 438 (2) of the Code of Criminal Procedure (ii) the petitioner will show the proof of payment of Rs. 2000/- in the account of Zila Parishad, Sitamarhi, with their surrender -cum- bail application(s).

Prabhakar Anand/-

(Anil Kumar Sinha, J.)

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