

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.14380 of 2020**

Arising Out of PS. Case No.-169 Year-2019 Thana- KARAI PARSURAI District- Nalanda

Mukesh Chaudhary, Son of Sri Chandrika Chaudhary, Resident of Village -
Kanhauli, P.S.- Karai Parsurai, District - Nalanda.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr. Mr. Ashok Kumar Chaudhary, Advocate Mr. Bhola Kumar, Advocate
For the Opposite Party/s	:	Mr.Parmeshwar Mehta, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER**

3 31-08-2020 Heard learned counsel for the petitioner and learned APP
for the State.

The petitioner in the present case is seeking pre-arrest bail in connection with Karai Parsurai P.S. Case No. 169 of 2019 registered for the offences punishable under Sections 420, 406, 120(B)/34 of the Indian Penal Code.

Learned counsel for the petitioner submits that the petitioner is the Mukhiya of Gram Panchayat Raj Makhdampur. In the First Information report lodged by the Panchayat Secretary on the direction of District Magistrate, Nalanda it is alleged that the Government money has been misused and misappropriated by Mukhiya and Ward Members in connection with the work Har Ghar Nal Ka Jal and Pakki Gali and Nali in Ward No. 5, 13 and 14. Accordingly, FIR has been lodged against the Mukhiya and 6 Ward



Secretaries of the three Wards.

It is submitted with reference to Annexure '4' that in exercise of powers under the Bihar Panchayat Raj Act, 2006 the Government of Bihar has framed rules known as the Bihar Ward Sabha and Ward Implementation and Management Committee Conduct of Business Rules, 2017.

It is his submission that by virtue of this Rules the entire work of the scheme in question was to be done by the Ward Implementation and Management Committee. It is the Ward Members who are ex-Officio Members and the Chairman of the Committee and the Panch of Gram Kachari elected from the Ward and Ward Sabha Secretary are the ex-officio members of the Committee. In case the post of Ward Member is vacant, the Mukhiya or up-Mukhiya of the Gram Panchaya if authorized by the Mukhiya shall convene the meeting of the Ward Committee.

Learned counsel submits that the account of the Ward Sabha has to be jointly operated by the Chairman (Ward Member) and Member Secretary. Thus, so far as this petitioner is concerned, he has no role to play in withdrawal of money. It is submitted that in course of investigation even the Block Development Officer has supported this part of the submission of the petitioner which may be found from paragraph '14' of the case diary.

Learned counsel has further relied on a letter no. 1217 dated 26.07.2019 (Annexure '5') written by the District Magistrate,



Nalanda in which direction has been given to all the Block Development Officer in Nalanda to recover the money from the Members of the Ward Implementation and Management Committee and the Secretary and also to lodge FIR. It is his submission that there is no direction to lodge FIR against the petitioner.

On these submissions, learned counsel submits that the names of the persons who have withdrawn the money being available on the record, so far as this petitioner is concerned, he deserves the privilege of anticipatory bail.

On the other hand, learned APP for the State has opposed the prayer for pre-arrest bail of the petitioner. Learned APP has drawn the attention of this Court towards the guidelines issued by the Panchayati Raj Department (Annexure '2') from which it would appear that after publication of the Rules of 2017 a guideline was issued by the Department on the very next day in which the various aspects relating to the work to be carried on under the Sath Nischay scheme have been provided.

Clause 6.4 of the said guideline provides the role of the Block Development Officer and the Accountant appointed by the Block Development Officer. It further states that the Junior Engineer shall record work done in the Measurement Book and the same will be made available to the management committee, photographs of the work would be taken and then after completion of work utility certificate shall be made available to the Gram Panchayat.



The Executive Committee of the Gram Panchayat in its meeting shall consider the utility certificate for the purpose of approval on the basis of the report of the Vigilance Committee and the Junior Engineer and the inspection report of Mukhiya/Members of the Ward Committee. It is thus, submitted that Mukhiya had a definite role to play in the matter of approval of expenditures.

It is further submitted that in the case diary the materials have come that the petitioner was involved in withdrawal of money with the Ward Member and he was taking commission for the purpose of transfer of funds. This has come in paragraph '26' of the case diary and some other paragraphs as well. Thus, it is submitted that the petitioner does not deserve the privilege of anticipatory bail.

Having regard to the entire facts and circumstances of the case, the materials available on the record and the investigation indicating that the petitioner as Mukhiya of the Gram Panchayat has indulged in taking commission in transfer of funds and thereafter withdrawal of money in the name of work even though he is not signatory to the cheque(s). It is he who had amongst others also responsibility to consider the utility certificate in terms of guidelines clause 6.4 for the purpose of approval, a huge amount has been allegedly withdrawn in the name of work which has not been properly done, this Court is not inclined to grant privilege of anticipatory bail to the petitioner. The prayer for anticipatory bail of the petitioner is, thus, refused.



In case the petitioner surrenders and prays for regular bail in the court below within a period of four weeks from today, his prayer for regular bail shall be considered on its own merit without being prejudiced by the present order of this Court.

Before this Court parts with this order, in the interest of administration of criminal justice system, this Court would direct that a copy of this order be sent to the Superintendent of Police, Nalanda who is the supervising authority to look into the guidelines (Annexure 2) and should consider the role of others who have been given responsibility under Clause 6.4 in the matter of monitoring, vigilance and management under the scheme and on his independent consideration, if he finds that the work in question has not been properly done and misappropriation has taken place because of all those who have been given the responsibility, it is for him to take an appropriate view.

This observation is only being made after going through the Clause 6.4 of the guidelines. Rest are left for the supervising authority.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

