

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 19962 of 2020

Arising Out of PS Case No.-53 Year-2020 Thana- HARSIDHI District- East Champaran

Birendra Kumar @ Birendra Kumar Mahto, aged about 48 years, Male Son of Hira Lal Mahto, Resident of Village-Laukaria, P.S.-Harsidhi, District-East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sandeep Kumar with Mr. Hemant Kumar, Advocates
For the State	:	Mr. Jharkhandi Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 03-12-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Sandeep Kumar, learned counsel along with Mr. Hemant Kumar, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner is in custody in connection with Harsidhi PS Case No. 53 of 2020 dated 17.02.2020, instituted under Section 34 of the Indian Penal Code and Sections 7, 12, 13(1)(d) of The Prevention of Corruption Act, 1988.



4. The allegation against the petitioner is that he was caught on video handing over Rs. 2,500/- to co-accused Ramdeo Prasad, who was Assistant Sub Inspector of Police for some favour in a pending case which he was investigating.

5. Learned counsel for the petitioner submitted that even as per the FIR, at best the petitioner was only a conduit for the money which was given by someone else and was also handed over to someone else, without there being any allegation that either the petitioner demanded the money or the petitioner kept part of the money before handing over to the person to whom it was to be given. Learned counsel submitted that for the sake of argument, even if it is accepted that the petitioner acted as a conduit, the Court may consider the practical aspect that as an elected representative of the area being the *Sarpanch*, sometimes the public prevail upon the elected representative to discharge such role as they lack confidence in approaching the authorities themselves and the petitioner also in good faith, trying to help a common citizen of his area may have acted in such a manner. Learned counsel submitted that he has filed 3rd supplementary affidavit yesterday in which it has been stated that he desires to resign from the post but has been told by the District Panchayat Raj Officer, East Champaran that he has to submit an affidavit



application in person before the local *Mukhiya* who would in turn forward the same to the District Panchayat Raj Officer, East Champaran. It has further been stated that as the petitioner is currently in jail, he is unable to do so. Learned counsel submitted that the petitioner having a clean antecedent is in custody since 18.02.2020. Further, learned counsel submitted that co-accused Ramdeo Prasad, who actually took the bribe has already been granted bail by a co-ordinate Bench earlier by order dated 23.06.2020 in Cr. Misc. No. 19877 of 2020.

6. At this juncture, the Court notices that paragraphs no. 1 to 4 i.e., running page 2, of the application has not been uploaded on the Court website. Learned counsel for the petitioner submitted that he would upload the same today itself.

7. Learned APP, from the case diary, submitted that the petitioner was the conduit of the money and has been caught on video handing over the money to co-accused Ramdeo Prasad.

8. On the stand taken in the 3rd supplementary counter affidavit with regard to the petitioner desiring to resign from the post of *Sarpanch*, the Court would only observe that it is a discretion which the petitioner has to exercise voluntarily and on his own volition and the Court would not comment on the same.



9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties and taking an overall view, let the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned Special Judge, Vigilance, Muzaffarpur in Harsidhi PS Case No. 53 of 2020 subject to the conditions (i) that one of the bailors shall be a close relative of the petitioner and (ii) that the petitioner and the bailors shall give an undertaking before the Court that he shall not indulge in any illegal activity. Any violation of the terms and conditions of the bonds or the undertaking shall lead to cancellation of his bail bonds.

10. The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar/Anand Kr.

AFR/NAFR	
U	
T	

