

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.21208 of 2020**

Arising Out of PS. Case No.-1 Year-2020 Thana- C.B.I CASE District- Muzaffarpur

KAMESHWAR MUKHIYA Son of Sri Kailash Mukhiya Resident of Village - Harajpur, P.S.- Muffasil (Motihari), District - East Champaran. At present Mukhiya, Panchayat Tikuliya, Block Motihari Sadar, P.S.- Muffasil (Motihari), District - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Superintendent of Police, Vigilance Investigation Bureau, Patna Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Kanhaiya Prasad Singh, Sr.Adv.

For the Opposite Party no.1: Ms.Asha Devi, APP

For the Opposite Party no.2: Mr. Arvind Kumar, Adv.

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

9 03-09-2020 Heard Mr. Kanhaiya Prasad Singh, learned senior counsel for the petitioner, Mr. Arvind Kumar, learned counsel representing the Vigilance Investigation Bureau and Ms. Asha Devi, learned APP for the State.

On 13.07.2020, after hearing learned counsel for the parties, this Court passed the following order:-

“Heard learned Senior Counsel for the petitioner, learned APP for the State and learned counsel representing Vigilance Investigation Bureau.

The petitioner seeks regular bail in connection with Special Case No. 02/2020 arising out of Vigilance P.S. Case No. 1 of 2020 registered for the offences under Section 9(a) of Prevention of Corruption Act.



Learned Senior Counsel for the petitioner submits that the petitioner is in custody for six months approximately and in near future the trial is not likely to be concluded as also that the release of the petitioner is not likely to adversely effect the course of trial and/or tampering with the evidence.

Mr. Arvind Kumar learned counsel for the Vigilance Investigation Bureau submits that he had earlier tried to upload the counter affidavit but the difficulties were faced in doing so whereupon the adjournment was granted by this Court. He though uploaded the same but the office of the High Court is unable to trace the same. Once again the counter affidavit has been filed on e-mail but he has information that because of on-going sanitization of the premises, office is once again unable to trace from the e-mail.

In course of argument, learned counsel for the Vigilance Investigation Bureau does not controvert the submission of learned Senior Counsel that release of the petitioner at this stage is likely to adversely affect the course of trial or may tamper with the evidence.

This Court directs release of the petitioner on provisional bail till further hearing of the matter on furnishing of bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Special Judge, Vigilance, Muzaffarpur, in connection with Special Case



No. 02/2020 arising out of Vigilance P.S. Case No. 1 of 2020 subject to the conditions as laid down under Section 437(3) of the Cr.P.C. as under:

(a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter,

(b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, or the commission of which he is suspected, and

(c) that such person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence.

And further condition that he will abide by and observe the guidelines and directives of the Government of India and the State Government with regard to COVID-19 Pandemic during the lockdown period. The authorities concerned shall take appropriate steps to ensure such observance prior to and after release of the petitioner.

Considering the present pandemic period in which this Court is also functioning with limited resources and there are difficulties in placing the materials on the record, this Court directs for listing this matter after four weeks i.e. on 12th August, 2020 along with the counter affidavit filed on behalf of the Vigilance Investigating Bureau.



In the meantime, the records will be updated by the office accordingly.”

Now counter affidavit has been filed on behalf of the Vigilance Investigation Bureau. Mr. Arvind Kumar, learned counsel for the Vigilance Investigation Bureau has submitted that this is a trap case in which the petitioner has been apprehended while accepting a bribe and that in course of investigation several witnesses have supported the allegations against the petitioner and in this regard statements have been made referring to various paragraphs of the case diary. It is also submitted that the charge-sheet has been submitted against the petitioner on 16.03.2020.

Learned counsel for the Vigilance has further submitted that the voice sample of the accused-petitioner was taken by F.S.L. team and the same has been sent to F.S.L., Bihar, Patna, but the report of the F.S.L., Bihar is still awaited. Learned counsel, therefore submits that the petitioner does not deserve privilege of bail. On query raised by this Court, learned counsel, however, submits that the petitioner having remained in custody for almost six months, if at all the Court is willing to confirm the bail granted to the petitioner, some stringent conditions may be imposed so that the petitioner cooperates in course of investigation and does not evade his appearance and prolong the trial.

Learned senior counsel for the petitioner has reiterated



his submissions as have been noticed by this Court while granting the provisional bail to the petitioner.

Regard being had to the facts and circumstances of the case, the fact that the petitioner has remained in jail for almost six months and at this stage particularly during covid-19 period when the Court is not functioning normally there is no chance of conclusion of trial in near future, this Court having noticed that further incarceration of the petitioner in jail would not be of any help to the investigation or prosecution, confirms the bail granted to the petitioner vide order dated 13.07.2020 subject to the conditions already stipulated in the said order and further condition that the petitioner shall cooperate in course of trial by putting his appearance on each and every date fixed in the matter. If he fails to appear on two consecutive dates in course of trial, the trial court shall proceed to cancel the bail bond of the petitioner. The Vigilance Investigation Bureau may also file an appropriate application for cancellation of bail in such circumstance.

This application is, thus, allowed.

(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'.

