

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 25351 of 2020

Arising Out of PS. Case No.-130 Year-2020 Thana- KHAGARIA (C. NAGAR) District-
Khagaria

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Md. Shabbir Alam, aged about 38 years (Male), son of Md. Kudrat Ali,
Resident of Village-Navtoliya, Ward No. 16, P.S.-Morkahi, District-
Khagaria, Teacher, Madhya Maktab, Rasauk, Khagaria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Chandan Kumar Kashyap, Advocate
For the State : Mr. Shyam Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 14-12-2020

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

2. Heard Mr. Chandan Kumar Kashyap, learned
counsel for the petitioner and Mr. Shyam Kumar Singh, learned
Additional Public Prosecutor (hereinafter referred to as the
'APP') for the State.

3. The petitioner apprehends arrest in connection with
Khagaria (C Nagar) PS Case No. 130 of 2020 dated 14.02.2020,
instituted under Sections 406/420 of the Indian Penal Code and
10 of The Bihar Conduct of Examinations Act, 1981.

4. The allegation against the petitioner and two others



is that they were invigilators in an examination centre in which 51 OMR sheets were given and 50 students had appeared but 49 OMR sheets were returned and one was missing and though the same happened on 06.02.2020, they had reported only the next day, i.e., 07.02.2020.

5. Learned counsel for the petitioner submitted that as there were three invigilators, immediately after collecting all the papers the same were counted and one was missing and they started enquiry and search to locate the one missing OMR sheet, but by that time, the working hours was over and, thus, only the next day, when nothing could be found out, they have reported. It was submitted that there was no *mala fide* as only papers which had been collected were required to be sent, which was done and, thus, it would not have had any adverse effect on the sanctity of the examination. Moreover, learned counsel submitted that the petitioner has no criminal antecedent and similarly situated co-accused Anil Kumar Rajak @ Tarun Kumar Rajak has been granted anticipatory bail by a co-ordinate bench on 27.11.2020 in Cr. Misc. No. 27587 of 2020.

6. Learned APP, from the case diary, submitted that the petitioner is accused of not reporting that one OMR sheet was missing. However, he did not controvert that co-accused



Anil Kumar Rajak @ Tarun Kumar Rajak is similarly situated to the petitioner.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, 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 Chief Judicial Magistrate, Khagaria in Khagaria (C Nagar) PS Case No. 130 of 2020, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further that one of the bailors shall be a close relative of the petitioner.

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

9. After the order was passed, learned APP submitted that he has filed modification petition with regard to the order dated 27.11.2020 by which cost of Rs. 5,000/- had been imposed for reasons recorded in the order. The grounds taken in the modification petition read as under:

“x x x x

3. That the fact is that there was a specific order of this Hon'ble court dated 27.11.2020 for



obtaining the up-to-date legible photocopy of the case diary of Khagaria (C Nagar) P.S. Case No. 130/2020 from the Superintendent of Police, Khagaria but same had not been received by A.P.P. due to elections and intervening festivals earlier and on the last occasion.

4. That it is humbly submitted that the Hon'ble court directed that the matter be listed on 27.11.2020 among top five cases but unfortunately the order was not complied with and the case diary of Khagaria (C Nagar) P.S. Case no. 130/2020 was not received from the S.P. Khagaria causing great inconvenience to the Hon'ble court. The Hon'ble court was pleased to impose a cost Rs. 5000/= (five thousand).

5. That the inconvenience caused to the Hon'ble court is deeply regretted. The opposite party i.e. Superintendent of Police Khagaria begs unconditional apology for inconvenience caused to the Hon'ble court.

6. That as a matter of fact that the case diary was sent by the O.P. i.e. S.P. Khagaria to the A.P.P but the same could not reach to the A.P.P. within time become of a huge traffic jam.

7. That it is mostly humbly being submitted that the superintendent of police khagaria took action & departmental proceeding against the inspector of police khagaria vide letter no. 7348 dated 28.11.2020. photocopy annexed herewith this modification application.



x x x x''

10. The Court is shocked at the conduct of the authorities. First of all, the signatory of the modification application is not the Superintendent of Police, Khagaria. If at all he was serious, the same had to be filed by him personally. Moreover, the petition has no affidavit. The Court may only indicate that now affidavits are being prepared, though not physically filed, but whatever is uploaded on the e-portal of the High Court, the same has to be in the form of an affidavit which is to be uploaded and not a merely signed petition, as it has no value in the eyes of law. On top of that, now the authorities have the liberty to get affidavit done at the local district headquarters itself without having coming to Patna and, thus, there was nothing to prevent the Superintendent of Police, Khagaria to file his own affidavit which should have been uploaded.

11. The same shows utter casualness on his part. The Court also does not find that any ground has been made out as no mitigating circumstances have been indicated, except for a bald statement that the person who was coming to the Court was caught in traffic jam. The Court is surprised as to why the copy of the case diary was being sent on the day when the case was listed which clearly would have resulted in no assistance to the



Court as learned APP could not, in any way, have gone through the case diary to be in a position to assist the Court.

12. At this stage, learned APP submitted that the matter be adjourned for the day for bringing on record a proper affidavit.

13. In view thereof, only for the purposes of considering the prayer of the Superintendent of Police, Khagaria, the matter be listed tomorrow (15.12.2020) under the heading ‘To Be Mentioned’, as the first item.

(Ahsanuddin Amanullah, J)

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