

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47474 of 2019

Arising Out of PS. Case No.-515 Year-2017 Thana- GANDHIMAIDAN District- Patna

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VIVEK KUMAR Son of Rameshwar Prasad Resident of Near Amprapali
Cinema Hall, P.S.- Danapur, Distt - Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Hemant Kumar, Adv.

For the Opposite Party/s : Mr. Ajay Mishra, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

7 16-06-2020 Heard learned counsel for the petitioner and learned
APP for the State.

The matter has been taken up through virtual Court
proceeding.

Initially it is submitted by Mr. Ajay Mishra, learned
APP for the State that in stead of counsel for the Vigilance, he is
representing investigating agency.

The petitioner has preferred the present application for
grant of bail in a case registered for the offences punishable
under Sections 471, 409, 420, 120B/34 of the I.P.C., 1860 and



Section 13(2) read with Section 13(1)(c), (d) of the Prevention of Corruption Act, 1988.

The prosecution case as per the written report of Executive Engineer, Public Health Division (East), Patna submitted before the S.H.O., Gandhi Maidan Police Station is to the effect that under the Swachha Bharat Mission (Rural) and Lohiya Swachhata Yojna sponsored by the Central and the State government, the toilets were constructed by the Public Health Engineering Department, Govt. of Bihar, Patna, prior to 2016, but subsequently, the said work has been done by the District Rural Development Agency. It is alleged that on 29.08.2017, in course of financial review by the District Magistrate, Patna, it transpired that in the District Rural Development Agency, Patna between 01.05.2016 to 23.06.2016, total Rs.14,36,91,509/- was spent on the scheme in question. Since the huge amount was spent within a short span of time, hence suspicion was raised by the then District Magistrate, Patna. Consequently, a Committee, consisting of Director, Account, DRDA, Patna and Deputy Development Commissioner, Patna, was constituted for inquiry. During inquiry, it was found that under conspiracy, huge amount to the tune of Rs.12,18,51,842/- has illegally been transferred to the account of several NGOs. It further transpired that the



accountant, PHED, Biteshwar Prasad Singh and ex Executive Engineer-cum-Member Secretary, DWSC, Vinay Kumar Singh, fraudulently, under a planned way transferred the aforesaid amount. Though the petitioner is not named in the FIR, but his name sprang up during investigation, when it was found that Rs.65,00,000/- was transferred to the NGO Shanti B.H. Training Centre to which the petitioner is the Secretary.

It is submitted by learned counsel for the petitioner that after due inquiry, the FIR was lodged against the person/NGO who were given money for constructing toilets. Admittedly the main accusation with regard to misappropriation of amount for construction of toilet is against co-accused, Biteswar Prasad Singh, as gets reflected from accusation in paragraph no.5 of the FIR, but in the whole FIR, the name of the petitioner's NGO does not figure.

During course of investigation, it was found that the petitioner's NGO was allotted the work of advertisement of the Swaccha Mission as well as scheme of construction of toilets. The petitioner's NGO, after completing the allotted advertisement work, submitted the bills, thereafter the payment was made. Learned counsel for the petitioner does not controvert this fact that Rs.65,00,000/- has been received by him



through his NGOs, but the said amount was only received on completion of allotted work. The petitioner is languishing in custody since 13.02.2018 and investigation has already been concluded. Moreover, some of the witnesses have been examined, but due to present pandemic, Covid-19 there is no likelihood of trial being concluded in near future since the Court is not functional in physical mode. A statement has been made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent.

Learned APP for the State submits that this is not in dispute that Rs.65,00,000/- has been transferred in the bank account of NGO of the petitioner and the petitioner withdrew the said amount either by himself being Secretary of the said N.G.O. or through others and misappropriated the said money which was supposed to be transferred in the account of the beneficiaries under the scheme in question for construction of toilets. During investigation, the witnesses have supported the accusation and on the basis of which, the petitioner has been charge-sheeted and now the trial has commenced.

Having heard learned counsel for the parties it appears that the fact that the impugned order suggests the money was transferred to the bank account of the petitioner's NGO for



construction of toilets, but in the FIR, it does not appear that the petitioner's NGO was entrusted with any construction work. However, without expressing any opinion on the accusation since the investigation has already been concluded, since the petitioner has been chargesheeted and in view of the fact that due to present pandemic, Covid-19, the physical court proceeding is not functioning, hence, the trial is not likely to conclude in near future, let the petitioner above named be released on bail for the present provisionally for a period of three months on furnishing one surety to the satisfaction of the learned Special Judge, Vigilance-1, Patna, in connection with Gandhi Maindan P.S. Case No. 515 of 2017.

However, in view of the present pandemic, COVID-19, it will be open for the learned Court below to accept the bail bond on furnishing an undertaking by the surety, on photo copy of his Aadhar Card, to the effect that he is ready to become the bailor of the petitioner which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional bail of the petitioner will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two sureties, including one surety given at the time of provisional



bail, of the like amount each to the satisfaction of the learned
Special Judge, Vigilance-1, Patna, in connection with Gandhi
Maidan P.S. Case No. 515 of 2017.

The learned Court below will further be at liberty to
extend the period of provisional bail further if the court
proceeding in physical mode will not resume in next three
months.

However, the learned Court below is at liberty to
cancel the bail bonds of the petitioner if he fails to appear on
two consecutive occasions, on resumption of trial.

(Dinesh Kumar Singh, J)

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