

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78832 of 2019

Arising Out of PS. Case No.-307 Year-2019 Thana- HARNAUT District- Nalanda

=====

Anish Kumar, aged about 45 years, Male, Son of Devendra Sharma,
Contractor of M/S Maa Shakuntala Infrastructure Pvt. Ltd., a resident of
Indrapuri, Keshari Nagar, Patliputra, Police Station-Patliputra, District-Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Arvind Kumar Mouar, Advocate

For the Opposite Party/s : Mr. Jitendra Kumar Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 18-09-2020

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

2. Heard Mr. Arvind Kumar Mouar, learned counsel
for the petitioner and Mr. Jitendra Kumar Singh, learned
Additional Public Prosecutor (hereinafter referred to as the
‘APP’) for the State.

3. The petitioner apprehends arrest in connection with
Harnaut PS Case No. 307 of 2019 dated 30.07.2019, instituted
under Sections 406/420 of the Indian Penal Code.

4. The allegation against the petitioner, who is the
Managing Director of M/s Maa Shakuntala Infrastructure
Private Limited, is that his firm had constructed culverts which



were found to be not in terms of the specifications as was required in the agreement.

5. Learned counsel for the petitioner submitted that he is innocent and has been deliberately implicated with *mala fide* intention. It was submitted that on 23.07.2019 when he and another Director had gone to senior officials of the Minor Irrigation Department, in the Secretariat at Patna, on being called, they were assaulted for which the Director of the firm had lodged Sachiwalaya PS Case No. 190 of 2019 on the same day. It was submitted that in this background, deliberately the petitioner and his firm were targeted and on the basis of a doctored inspection report the present case has been instituted on 30.07.2019. Learned counsel submitted that the present FIR is based on a report dated 26.07.2019, i.e., 7 days after lodging of Sachiwalaya PS Case No. 190 of 2019. Learned counsel submitted that even on merits, the matter is purely contractual/civil and in the agreement itself all the terms and conditions are covered and in case of any contingency where the work is found to be substandard, the contractor can be penalised and even asked to rectify the defect. It was submitted that when such clause is already there in the agreement between the parties, there is no scope for institution of any criminal



proceeding which is an abuse of the process of the Court. At this juncture, learned counsel submitted that the petitioner and his firm reiterate that if in fact there is any technical issue which needs to be rectified, they are bound and shall rectify the same as per the terms of the agreement. Learned counsel submitted that the petitioner has clean antecedent except for another case, i.e. Rahui PS Case No. 288 of 2019 which was lodged by the same Department, in connection with similar work, under Sections 406/420 of the Indian Penal Code on 24.07.2019, in which, a co-ordinate bench has granted anticipatory bail to the petitioner in Cr. Misc. No. 75597 of 2019 by order dated 17.06.2020.

6. Learned APP, from the case diary, submitted that the inspection team had found that the work which was done by the petitioner's firm was not in terms of the specifications required and, thus, it would amount to defalcation of public money. However, he could not counter the stand of learned counsel for the petitioner that for any such shortcoming, the agreement itself provides for both penalty and the requirement of the contractor making good or repairing the construction to make it in terms of the specifications.

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 A.C.J.M., Nalanda in Harnaut PS Case No. 307 of 2019, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 with further condition that one of the bailors shall be a close relative of the petitioner.

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

(Ahsanuddin Amanullah, J)

Anjani/-

AFR/NAFR	
U	
T	

