IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 71694 of 2019

Arising Out of PS Case No.-266 Year-2018 Thana- AURANGABAD TOWN District- Aurangabad

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Shanti Bhushan Arya @ Shanti Bhushan Kumar Arya @ Shanti Narayan Arya, male, aged about 48 years, Son of Late Raghuni Ram, Resident of Purandarpur Kesho Path, P.S.- Jakkanpur, District- Patna, the then District Welfare Officer, Aurangabad, at present posted as Deputy Director, Welfare Department, Darbhanga Division, Darbhanga.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Hemandra Prasad Singh, Sr. Advocate Mr. Anil Kumar, Advocate
For the State	:	Mr. Md. Ataur Rahman, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

Date : 17-06-2020

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

2. Heard Mr. Hemendra Prasad Singh, learned senior counsel along with Mr. Anil Kumar, learned counsel for the petitioner and Mr. Md. Ataur Rahman, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner is in custody in connection with Aurangabad Town PS Case No. 266 of 2018 dated 11.09.2018 instituted under Sections 420, 409 and 120B of the Indian Penal Code.

4. The petitioner along with others is accused of defalcation of Government money meant for scholarship to Scheduled Caste and Scheduled Tribe students.

5. Learned counsel for the petitioner submitted that he was posted as District Welfare Officer from July, 2012 to August, 2016 at Aurangabad and two years after his transfer, on a complaint made by a private person, against the Principal of one such college, whose students were also given scholarship, a three member committee was constituted to enquire, which has given a report that funds were transferred in a highly illegal manner and paid to fictitious students, criminal case was instituted in which the petitioner was also made an accused. Learned counsel submitted that two years after his transfer from Aurangabad, the enquiry being conducted, without notice to the petitioner or giving him an opportunity to explain things, itself vitiates the entire report. Leaned counsel submitted that the allegation against him cannot be of embezzling or defalcating Government money since it is admitted that the money was sent to the respective colleges. Learned counsel submitted that such transfer of funds by the petitioner to the colleges concerned was based on the report by the office after verification and, thus, if there is any discrepancy, it is the responsibility of such staff who had given a report certifying

with regard to the authenticity of the claim by the respective colleges for such money. Learned counsel submitted that he has two other criminal cases against him but both have been registered after he was transferred out of the district. Learned counsel further submitted that the petitioner is in custody since 05.09.2019. Learned counsel submitted that the Assistant and the *Nazir* in the office have been granted anticipatory bail.

6. Learned APP, from the case diary, submitted that it was the petitioner who was mainly responsible for such defalcation, for the reason, that he had transferred huge amounts of money by issuing cheques bearing his signature to the colleges. It was submitted that the funds are sent by the State Government to be transferred directly into the accounts of the beneficiaries through RTGS and the fact that cheques were issued by the petitioner to the colleges and thereafter the colleges showing such payment to students, including fictitious ones, through cash, clearly exposes the fraud in the transactions. Learned counsel submitted that it has been found that even to fictitious students, scholarship money have been paid, which runs into over two crores of rupees. It was submitted that such money from Government coffer meant for a targeted segment of the society being defalcated in such a blatant manner, by flouting all

Government Rules and instructions, that too, by a senior officer like the petitioner, clearly needs to be viewed seriously by the Court. It was further submitted that the case of *Nazir* and the Assistant, who have been granted anticipatory bail, cannot be compared to that of the petitioner, as it was the petitioner who had issued the cheques, despite there being instructions to credit the amount directly to the account of the beneficiaries through RTGS, and sending it to the colleges, which has not been done by those office staff.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to enlarge the petitioner on bail.

8. Accordingly, the application stands dismissed.

(Ahsanuddin Amanullah, J.)

P.Kumar/Anand Kr.

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