IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24096 of 2021

Arising Out of PS. Case No.-38 Year-2020 Thana- ARA RAIL P.S. District- Bhojpur

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Sanjay Kumar Tiwary, aged about 57 Years (Male), son of late Bishwanth Tiwary, resident of village and post- Ram Shahar, P.S.- Barahara, District- Bhojpur.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. P K Shahi, Senior Advocate with Mr. Brisketu Sharan Pandey, Advocate
For the State	:	Mr. Binod Kumar, APP
For the Informant	:	Mr. Rajendra Nath Sinha, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 21-08-2021

The matter has been heard *via* video conferencing.

2. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the petitioner on 10.08.2021, which was allowed.

3. Heard Mr. P K Shahi, learned senior counsel along with Mr. Brisketu Sharan Pandey, learned counsel for the petitioner; Mr. Binod Kumar, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State and Mr. Rajendra Nath Sinha, learned counsel for the informant.

4. The petitioner apprehends arrest in connection with Ara Rail PS Case No. 38 of 2020 dated 09.10.2020, instituted under Sections 420, 468, 471, 406 and 120-B of the Indian

Penal Code.

5. The allegation against the petitioner is that he had taken Rs. 11,50,000/- in instalments on the pretext of providing a job as TC in the Railways to the son of the informant, but he had provided a fake appointment letter and thereafter when the informant demanded his money back and also sent legal notice, no reply was received.

6. Learned counsel for the petitioner submitted that he is an Assistant Sub Inspector in the Railway Police and has been falsely implicated. It was submitted that the petitioner has no control over any appointment under the Railways and, thus, could not have assured of any such employment. Further, it was submitted that it is hard to believe that the informant, who himself is a practicing advocate for almost 22 years would be party to such illegality knowing fully well that one cannot buy a job under the State/Railways by giving money as there is specific provision in law for getting such employment. Thus, it was submitted that the informant himself is the person, who offered bribe and if it is accepted for the sake of argument without admitting the same that such money was transacted, the person giving the bribe is equally guilty, if not more, as the person, who accepted such bribe. Further, it was submitted that

there is natural presumption that the informant being a legal practitioner for more than two decades would not be so naive and gullible so as to expect and believe that somebody would give him a job without complying the required formalities for obtaining such job under the Railways, which is directly under the Central Government. Leaned counsel submitted that not a single piece of evidence has been brought on record to indicate the petitioner having been given the money and most surprisingly, the allegation that there are other complaint cases filed is also not borne out since the petitioner is not aware of any case against him till date. It was submitted that one Vikash Kumar Dubey, whose name has also been mentioned in the FIR and is said to be a relative of the petitioner, who lives in the village of the informant, has filed a petition before the Superintendent of Police, Railway, Patna, in which he has stated that he along with the informant used to indulge in such illegal business and some money was also transacted between them. Thus, it is clear that the petitioner has no role and because he is in employment of the Railways, to exert undue pressure on him to help in the informant's illegal activities, he has been implicated in the present case. Learned counsel submitted that similar issue came before a coordinate Bench in Cr. Misc. No.

9428 of 2006 **(Vijay Sharma and another Vs. The State of Bihar)**, **2011 (1) PLJR 780** and it has been held that no offence under Section 406 of the Indian Penal Code can be made out if the allegation is that for employment in government service, some money was transacted as the agreement itself was to commit an offence under the Penal Code.

7. Learned APP submitted that the petitioner had taken money for providing job to the son of the informant and had given a fake appointment letter and had not even returned the money.

8. Learned counsel for the informant submitted that for getting job of his son in the Railways, he had given a huge amount of money being a man of means, but the petitioner has cheated him by firstly giving a forged appointment letter and thereafter not returning the money.

9. On a query to learned counsel for the informant as to how being a practicing advocate for over 20 years, he could have given money in the form of bribe for getting job of his son and now he was agitating in law for non-fulfilment of the commitment by the petitioner, as the contract/agreement itself was not only *void ab initio,* but totally illegal, learned counsel could not give any reply.

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that the allegation itself states that in lieu of money job was promised to the son of the informant and he being a practicing advocate for almost 22 years, such allegation raises serious doubt with regard to its authenticity as the Court is unable to believe that an advocate of more than 20 years of standing would be so naive so as to not understand the implication of giving money to a person for getting a job under the State. Moreover, there is nothing to show that the petitioner actually received money and the fact that the co-accused Vikash Kumar Dubey has himself admitted he and the informant himself, who were in the said business and there was transaction of money also, the Court is persuaded to allow the prayer for pre-arrest bail.

11. Accordingly, 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 Railway Court/ Railway Judicial Magistrate, Bhojpur (Ara) in Ara Rail PS Case No. 38 of 2020, subject to the conditions laid down in Section

438(2) of the Code of Criminal Procedure, 1973 and further (i) that one of the bailors shall be a close relative of the petitioner, and (ii) that the petitioner shall cooperate with the Court and the police/prosecution. Failure to cooperate shall lead to cancellation of his bail bonds.

12. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the petitioner, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioner.

13. The petition stands disposed of in the aforementioned terms.

(Ahsanuddin Amanullah, J)

J. Alam/-

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