

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21736 of 2020

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

Uday Singh, Son of Binod Kumar, Resident of Mohalla- Hardia, Sector- A,
P.S.- Rajauli, Distt- Nawada.

... .. Petitioner

Versus

1. The State of Bihar.
2. Inspector General, Vigilance Department, Patna, Bihar.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Ramakant Sharma, Sr. Advocate and Mr. Amrendra Kumar, Advocate.
For the State	:	Mr. Ajay Mishra, A.P.P.
For the Vigilance	:	Mr. Anjani Kumar, Sr. Advocate and Mr. Arvind Kumar, Spl. P.P.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
CAV ORDER

10 29-09-2021 1. Learned counsel for the petitioner is directed to remove the defects, as pointed out by the office, within a period of eight weeks.

2. Heard Mr. Ramakant Sharma, learned senior counsel for the petitioner, learned counsel for the State and learned counsel appearing on behalf of the Vigilance Department through Virtual mode.

3. The petitioner seeks bail in connection with Special Case No. 349 of 2017, arising out of Gandhi Maidan P.S. Case No. 515 of 2017 registered under Sections 467, 468, 471, 409, 420, 120(B) and 34 of the IPC and 13(1)(c)(d) r/w 13(2) of the Prevention of Corruption Act, 1988.



4. The prosecution case, in short, is that the accused persons misappropriated huge sum of money meant for the schemes of the Central Government and the State Government.

5. The prayer for bail of the petitioner has been rejected twice vide Cr. Misc. No. 17924 of 2018 under order dated 22.06.2018 by the then Co-ordinate Bench of this Court and vide Cr. Misc. No. 77159 of 2019 under order dated 01.05.2019, by this Court taking into account that there is serious allegation of misappropriation of public money to the tune of Rs.10 Crores and odd amount by the N.G.O. in question and the petitioner being the Treasurer of the said N.G.O. has played a major role in the said misappropriation.

6. This is the third attempt made by the petitioner for renewal of his prayer of bail. It has been submitted by learned senior counsel appearing for the petitioner that the petitioner has got no criminal antecedent. He further submits that the petitioner is languishing in custody since 27.11.2017 and as such has already undergone a substantive period of incarceration as an under trial prisoner. There is no allegation of tampering of witnesses alleged against the petitioner. Charge has already been framed in the present case and there is no reason for which the petitioner should remain behind the bar. The petitioner has



falsely been implicated in the present case. The name of the petitioner has transpired in this case as being the Treasurer of the said N.G.O. in question. It has been further submitted by the learned senior counsel for the petitioner that several co-accused standing more or less on the same footing, as that of the petitioner, have been given the privilege of bail by different Co-ordinate Benches of this Court. Hence, the petitioner be also released on bail. Learned senior counsel further submits that under the criminal jurisprudence an accused is assumed to be innocent until proven guilty. He submitted that the nature of pre-trial custody is not punitive rather the purpose of pre-trial custody is that the accused does not cause any impediment or hindrance in the investigation and trial. In the present case, no purpose would be served by keeping the petitioner in jail, rather, by enlarging the petitioner on bail would cater the cause of justice as the petitioner would get a fair chance to defend himself during the trial. It is submitted on behalf of the petitioner that Bail is rule and jail is exception. He has pointed out that the trial is not proceeding and rather crawling at a snail's pace. Out of 98 prosecution witnesses, only two have been examined so far and there is no likelihood of the trial being concluded in the near future.



7. A counter affidavit has been filed by the Department of Vigilance wherein the prayer for bail of the petitioner has been opposed stating therein that the said N.G.O. in question misappropriated the entire public money and for the said reason the present case was instituted. Being the Treasurer of the N.G.O. in question, the petitioner has played a pivotal role in misappropriation of public money.

8. It is not out of place to mention here that during course of argument, learned senior counsel appearing for the Vigilance had brought the attention of this Court to the order dated 20.11.2019 passed in Cr. Misc No. 43365 of 2018, whereby a Co-ordinate Bench of this Court, presided by Hon'ble the Chief Justice of this Court was pleased to dismiss the bail application of one of the co-accused and further was pleased to issue notices to some of the other co-accused persons to show cause as to why the orders granting bail in their favour be not cancelled. The extract of the same is being reproduced herein below:

“If any one of the accused are abusing the process of law, they are not entitled to enjoy the privilege of grant of bail. Unfortunately, the State has not taken any action seeking cancellation of orders of bail. But this Court is not



helpless in such matters and as such issue notices to all the bail applicants mentioned above in the table to show cause as to why the orders granting bail in their favour be not cancelled.”

9. After being cognizant of the aforesaid order, this Court vide order dated 30.06.2020 had directed the learned senior counsel appearing for Vigilance to bring on record the details regarding the status of bail of all the accused persons of this case and the steps being taken, if any, by the prosecution for cancellation of bail granted to the co-accused. In compliance to the order dated 30.06.2020, a supplementary counter-affidavit has been filed by the Vigilance. Annexure-‘A’ of the said supplementary counter affidavit contains a chart in which details regarding status of bail of co-accused persons has been mentioned. Annexure-‘B’ is the compilation of the orders by which the co-accused persons have been enlarged on bail by different Co- ordinate Benches of this Court. From the materials available on record it is evident that thirty accused persons have been enlarged on bail in this case and the prosecution has not taken any steps for cancellation of their bail. However, in paragraph 9 of the aforesaid supplementary counter affidavit, it has been stated that steps are being taken to verify the case of each accused person but whether the prosecution intends to



proceed for cancellation of the bail granted to co-accused, the said supplementary counter affidavit is silent on this issue.

10. It is necessary to mention here that the co-accused whose bail was rejected by order dated 20.11.2019 passed in Cr. Misc No. 43365 of 2018, by the Co-ordinate Bench of this Court presided by Hon'ble the Chief Justice, has already been granted the privilege of bail vide order dated 14.07.2021 passed in Cr. Misc No. 22837 of 2020 by a Co-ordinate Bench of this Court.

11. Be that as it may, it is trite canon of law that Justice should not only be done but should manifestly and undoubtedly be seen to be done. Taking into account that, other co-accused have been granted the privilege of bail and the petitioner being in jail since 27.11.2017, coupled with the fact that there is no likelihood of the trial reaching to its conclusion in the near future; I find no valid reason as to why the principle of parity be not extended to the petitioner as to maintain the judicial consistency and uniformity.

12. Considering the aforesaid facts and circumstances, I am inclined to grant bail to the petitioner, on the condition that the petitioner shall remain present before the Trial Court on each and every date and if he fails to remain present on two consecutive dates, without any justifiable reason, the bail



granted to the petitioner shall be cancelled by the court below itself after affording an opportunity of hearing. The petitioner is directed to be released on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand Only) with two sureties of the like amount each to the satisfaction of the learned Special Judge, Vigilance-1, Patna in connection with Special Case No. 349 of 2017, arising out of Gandhi Maidan P.S. Case No. 515 of 2017.

(Sudhir Singh, J)

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