

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30784 of 2020**

Arising Out of PS. Case No.-85 Year-2016 Thana- PIRI BAZAR District- Lakhisarai

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VINOD KUMAR BHAGAT Son of Late Kanhaiya Prasad Bhagat Resident of
Village- Mungraura, P.S.- Jamalpur, District- Munger.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. A.B. Ojha, Sr. Advocate
		Mr. Awadhesh Kumar Mishra, Advocate
For the Opposite Party/s :		Mr. Ram Sumiran Roy, APP

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CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

8 16-03-2021 In relation to Piri Bazar P.S. Case No.85 of 2016, registered on 20.10.2016 for the offences punishable under Sections 467,468,471,472,409/34 of the Indian Penal Code, the petitioner, who is named in the FIR, approached the Court of learned Second Additional Sessions Judge, Lakhisarai, for the first time on 15.02.2020, seeking grant of bail, apprehending his arrest. The application was dismissed on 09.06.2020 by the Court below, whereafter, he has approached this Court by making present application, seeking anticipatory bail.

2. I have heard Mr. A.B.Ojha, learned senior counsel for the petitioner and the learned Additional Public Prosecutor, appearing on behalf of the State.

3. There is no clue why the petitioner started taking



steps for grant of anticipatory bail nearly three and half years after registration of the First Information Report disclosing commission of non-bailable offences of serious nature.

4. The petitioner was posted, at the relevant point of time, as Panchayat Secretary, Surajgarha in the District of Munger. It is alleged against him that after having withdrawn from Nazarat a sum of Rs. 17,65,000/- of 13th Finance Commission for PCC work in the Panchayat and a sum of Rs. 75,93,450/- for distribution amongst the pensioners, he, in connivance with the Mukhiya of the concerned Gram Panchayat, misappropriated the said amount.

5. When this matter was taken up on 06.01.2021, the Court, noticing unusual delay in petitioner approaching the Court for grant of anticipatory bail, enquired about the reason therefor. Adjournment was sought for on behalf of the petitioner for filing a supplementary affidavit to explain the delay. Subsequently, when the matter was taken up on 20.01.2021, further time was sought on behalf of the petitioner. This made the Court to ask the Superintendent of Police, Lakhisarai, to explain the circumstance in which the petitioner could not be apprehended in the case despite the fact that the First Information Report was registered in 2016.



6. An affidavit has been filed on 08.02.2021 sworn by the Deputy Superintendent of Police, stating therein that the supervision report in the case was submitted by the Sub-Divisional Police Officer, Lakhisarai, on 28.05.2017, whereafter the Superintendent of Police, had issued a direction on 31.05.2017 to arrest the accused persons as allegation against them were found to be true. It was further directed that in case the petitioner was found absconding, the Investigating Officer should proceed further for proclamation and attachment under Sections 82 and 83 of the Code of Criminal Procedure, 1973. It transpires from the said affidavit that only after receipt of the order passed in this case dated 20.01.2021, the district police administration woke up and sought for an explanation from the Investigating Officer as to why the accused could not be arrested despite direction of the Superintendent of Police and no steps were taken for issuances processes under Sections 82 and 83 of the Cr.P.C. The Superintendent of Police, it has been stated, further directed the Station House Officer, Piri Bazar Police Station to take over the charge of the case for investigation and arrest the accused persons. It has also been stated that since the accused persons are absconding from their residence, the Court below has been requested to issue warrant



of arrest against the petitioner and co-accused Sarojni Devi, the then Mukhiya of the Gram Panchayat. The Mukhiya of the Gram Panchayat has since been arrested on 30.01.2021. The petitioner is still at large.

7. It has further been stated in the affidavit that despite best efforts, the petitioner could not be arrested because of prevailing pandemic. It has been disclosed that a departmental action has been initiated against the then Investigating Officer for inaction and that the Station House Officer through his letter dated 02.02.2021 has assured the Superintendent of Police that the petitioner will be arrested soon, though he is absconding.

8. This is to be noted that in support of his plea for his release on anticipatory bail, a supplementary affidavit has been filed on behalf of the petitioner stating therein, in respect of completion of PCC work, that the same has been done in five phases and four phases have been completed in 2016 itself. It has been stated that 5th phase work could be completed belatedly in the year 2019 because of the land dispute in the village and the remaining amount had been adjusted in the Government's fund from where it was obtained.

9. The petitioner has taken a peculiar stand that after



lodging of the criminal case, he was placed under suspension by order dated 22.12.2016, but during the said intervening period, 1/5th of the remaining work was completed by him. According to him, thus, despite being under suspension, he was using the money, which he had admittedly withdrawn for construction of PCC work and misappropriated. It is peculiar also to note that on the one hand, it is the case of the Superintendent of Police that despite specific direction issued by him, the Investigating Officer failed to arrest him, it is the petitioner's case that after lodging of the First Information Report, he got the PCC work executed, when he was under suspension.

10. It has also been stated in the supplementary affidavit that in a departmental proceeding held against him, punishment of withholding of five increments with cumulative effect has been imposed by the District Magistrate by an order passed on 12.05.2020. A copy of the said order has been brought on record by way of Annexure-6 to the second supplementary affidavit filed on behalf of the petitioner. Least said the better about the order dated 12.05.2020. In respect of the amount withdrawn by him for distribution of pension and allegedly misappropriated, it is the petitioner's own case that he has



deposited un-utilized amount of Rs. 5,35,000/- in the account of the Panchayat Secretary, in respect of which money receipt has been issued on 05.02.2020. This fact goes to suggest that the petitioner, after having withdrawn the amount in 2015, had kept it in his own custody during the period when he was under suspension and did not hand over the charge. His suspension was subsequently revoked on 12.05.2020.

11. In view of the facts noted above, in the Court's opinion, the petitioner appears to have attempted to influence investigation inasmuch as the investigation could not be completed because he could not be apprehended for all these years.

12. The counter affidavit filed on behalf of the Superintendent of Police indicates that the Investigating Officer did not take any steps for apprehending the petitioner and other co-accused despite clear direction of his superiors.

13. The allegation against the petitioner constitutes offence under Section 409 of the Indian Penal Code, which is punishable with imprisonment for life or with imprisonment of either description for a term which may extend to ten years. In the Court's opinion, there is serious allegation against the petitioner of having misappropriated the public money. His



conduct, in the Court's opinion, dis-entitles him to get privilege of anticipatory bail.

14. Considering the facts and circumstances, noted above, I am not inclined to grant the petitioner privilege of anticipatory bail.

15. This application is, accordingly, rejected.

16. Let this order be communicated to the Superintendent of Police, Lakhisarai.

17. Let this order be also communicated to the Chief Secretary, Government of Bihar, to consider whether there has been abject failure on the part of the state machinery in dealing with the allegations of such serious nature against a public servant pertaining to misappropriation of public money.

(Chakradhari Sharan Singh, J)

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