

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 2050 of 2021

Arising Out of PS. Case No.-151 Year-2020 Thana- GURUA District- Gaya

Binod Kumar @ Vinod Kumar, Male, aged about 63 years, Son of Ram Sagar Sharma, Resident of Village- Arpa, PS- Hilsa, District- Nalanda, retired IV Grade Employee-cum-then Nazir, Block Office- Gurua, Parent Department Joint Director (Agriculture), Magadh Division, Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Siyaram Shahi, Advocate

For the State : Mr. Nirmal Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 19-07-2021

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 14.07.2021, which was allowed.

3. Heard Mr. Siyaram Shahi, learned counsel for the petitioner and Mr. Nirmal Kumar Sinha, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

4. The petitioner apprehends arrest in connection with Gurua PS Case No. 151 of 2020 dated 10.07.2020, instituted under Section 409 of the Indian Penal Code.

5. As per the FIR, which has been lodged by the Block Development Officer, Gurua, Gaya, the petitioner is said to have



not reconciled the vouchers for Rs. 20,72,660/- at the time of handing over of charge.

6. Learned counsel for the petitioner submitted that he was the In-charge *Nazir*, at the relevant time and though it is alleged that while handing over charge, with regard to over Rs. 50 lakhs, vouchers for an amount of Rs. 20,72,660/- were not reconciled, but the same is stale and a very belated step as the period of allegation relates to 29.11.2010 to 16.08.2011 and the petitioner has since superannuated on 31.12.2017. Learned counsel submitted that when show cause was issued on the same allegation, he had moved this Court in CWJC No. 81 of 2019, in which a co-ordinate Bench by order dated 25.07.2019 had quashed the same giving liberty to the respondents to take recourse in accordance with law. Learned counsel submitted that the authorities could not have instituted the present criminal proceeding as there is bar under Rule 43(b) of the Bihar Pension Rules, 1950 (hereinafter referred to as the 'Rules') specifically sub-Section (ii) of the Rules which does not permit departmental as also criminal proceeding for an incident which relates to more than four years prior to institution of such proceeding. Learned counsel submitted that the informant has also stated in another communication that there was some doubt with regard to the



concerned vouchers amounting to Rs. 20,72,660/-, but the petitioner cannot be blamed for any confusion as at the relevant time, he had handed over the entire records according to which, there was no discrepancy. Further, learned counsel submitted that against the petitioner a certificate case has also been instituted for recovery of Rs. 20,72,660/-. It was submitted that prior to his superannuation, no departmental or criminal proceeding was pending against him. Learned counsel submitted that case under Section 409 of the Indian Penal Code is also not maintainable.

7. Learned APP submitted that the petitioner is not clean for the reason that for a huge amount of Rs. 20,72,660/-, he had not submitted the vouchers and just because till his superannuation, it was not detected, he cannot claim immunity. Learned counsel submitted that even the stand of the petitioner that during his service career, no departmental or criminal case has been filed against him is incorrect as in the present petition itself, it has been stated that he is accused in Civil Line PS Case No. 257 of 2006 instituted under Sections 409/34 of the Indian Penal Code in which charges have been framed and trial is pending. Thus, it was submitted that the petitioner is in the habit of defalcating Government money. Further, it was submitted that the petitioner cannot take the plea of there being a bar to institution of



proceeding under Section 43(b) of the Rules for the reason that the same is only in the context of a departmental proceeding and does not put a restriction on a criminal proceeding being instituted. Further, learned APP submitted that the allegations made out from the FIR have to be seen and the sections which the police indicate shall not limit the allegation to such sections as finally it is for the Court to take a call at the time of taking cognizance and framing of charge and from the allegation, the charge is of a very serious nature i.e., non-reconciliation of vouchers relating to public money to the tune of Rs. 20,72,660/-, especially in light of a previous allegation against him of the year 2006.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to grant pre-arrest bail to the petitioner.

9. Accordingly, the petition stands dismissed.

(Ahsanuddin Amanullah, J.)

P. Kumar

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