

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80910 of 2019**

Arising Out of PS. Case No.-462 Year-2019 Thana- BHABHUA District- Kaimur (Bhabua)

Arun Kumar Upadhyay (Male) aged about 46 years, Son of Late Dhanush Dhari Upadhyaya Resident of Village - Baramuli, P.S.- Sonhan, District- Kaimur at Bhabhua

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Additional Superintendent of Police, Vigilance Investigation Bureau, Patna Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Alok Kumar Chaudhary, Advocate Mr. Kulanand Jha, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For the Vigilance	:	Mr. Rana Vikram Singh, Special PP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 05-10-2021

Heard Mr. Alok Kumar Chaudhary, learned counsel for the petitioner; Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State and Mr. Rana Vikram Singh, learned Special Public Prosecutor (hereinafter referred to as the 'Special PP) for the Vigilance.

2. The petitioner apprehends arrest in connection with Bhabhua PS Case No. 462 of 2019 dated 05.08.2019, instituted under Sections 467/ 468/ 471/ 419/ 420/ 205/ 193/ 219/ 120(B)/ 511/34 of the Indian Penal Code.

3. The petitioner, who was the Mukhiya of Mahuari



Panchayat in the district of Kaimur at the relevant time, is accused of having raised forged bills to the tune of Rs. 3,64,000/- with regard to installation of solar lights in his panchayat.

4. Learned counsel for the petitioner submitted that as per the allegation, the petitioner is said to have raised the bill for payment but no payment has yet been made. It was submitted that the petitioner being the Mukhiya had from his personal funds got the solar lights installed and after that he had raised a bill before the authorities for payment which was denied due to which he moved the Court in a Writ Petition and the order was to make payment if the work was done and when the same was not implemented he had to file contempt petition which resulted in vigilance enquiry in which the authorities have now tried to show the petitioner as the culprit. Learned counsel submitted that the role of the Panchayat Secretary and other officials is equal to that of the petitioner and if there was any dereliction on their part, the petitioner should not be singled out for separate treatment. In this connection, he submitted that Kapildeo Ram, who was the Panchayat Secretary has been granted anticipatory bail by a coordinate bench in Cr. Misc. No. 71503 of 2019 on 26.11.2019; Munajir Khan @ Md. Munazir Khan, who was the



Urdu Translator has been granted anticipatory bail in Cr. Misc. No. 9332 of 2020 on 13.11.2020; Rajani Kant Ojha, who was the Block Development Officer has been granted anticipatory bail in Cr. Misc. No. 82143 of 2019 on 08.03.2021 and Kanhaiya Ram, who was the Block Welfare Officer has been granted anticipatory bail in Cr. Misc. No. 3978 of 2020 on 03.09.2020.

5. Learned Special PP for the Vigilance submitted that the petitioner being the Mukhiya had indulged in grave irregularities. Firstly, it was submitted that the petitioner in the capacity of Mukhiya had no authority to get the work executed or to raise a bill which was the job of the Panchayat Secretary. Moreover, it was contended that a procedure unknown in law has been adhered to inasmuch as, the petitioner claims to have made payment from his personal funds to the tune of Rs. 3,64,000/- for a work of the panchyat. It was submitted that such work should not have been done in personal capacity and if so done, no claim for the same could have been raised from the government fund. Learned Special PP submitted that the petitioner had also manipulated the records in the sense that the money which was sought to have been used for installation of solar lights was meant for the scheme of the year 2011-12 but



the same has been shown to have been completed in the year 2010-11, even prior to the scheme being sanctioned. Further, it was submitted that the bill of the firm from whom quotation was asked for, the Proprietor had categorically stated during enquiry that the same was forged and fabricated and surprisingly, he got the license for the work and his TIN number in the year 2012 whereas in February, 2010 itself the work is said to have been completed and payment made.

6. Learned APP adopted the arguments of learned Special PP for the Vigilance.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that role and conduct of the petitioner is not above board. He being the Mukhiya, that is, the head of the panchayat and himself creating the bill for payment and also claiming to have paid from his personal fund is not the conduct which is expected in the normal course of human behavior. Further, as per the records itself, the money was utilized in February, 2010 when the scheme was neither sanctioned nor it was for that year as it was for the next financial year 2011-12. Even the contention of learned counsel for the petitioner that four others have been granted bail, their case cannot be said to be identical



to the petitioner for the simple reason that they were not the persons who claim to have made payment or who have presented the bill seeking payment from government fund. It cannot also be lost sight of that witnesses, including the proprietor of the firm which is said to have been executed the work and given quotation as also the Panchayat Secretary and others have stated that it was the petitioner who himself had presented the bills claiming to have already made the payment to the firm. Thus, on an overall view of the matter, the Court is not inclined to grant pre-arrest bail to the petitioner.

8. Accordingly, the petition stands dismissed.

9. Having regard to the submission of learned counsel for the petitioner, it is observed that if the petitioner appears before the Court below within six weeks from today and prays for bail, the same shall be considered on its own merits, in accordance with law, without being prejudiced by the present order.

(Ahsanuddin Amanullah, J)

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