**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**CRIMINAL MISCELLANEOUS No.21209 of 2022**

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

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BALI CHARAN RAI S/o Pashuram Rai R/o village- Bhudhar Tola, Vyapur, P.S.- Maner, Distt.- Patna

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Y. C. Verma, Sr. Advocate.
Mr. Hemant Kumar, Advocate.
For the Opposite Party/s : Mr. Ajay Mishra, APP.
For the Vigilance : Mr. Anil Singh, Spl.P.P.

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**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**

ORAL ORDER

5 28-09-2022 Learned counsel for the petitioner is permitted to remove defect(s), as pointed out by the office, if any, within a period of four weeks from today.

Heard Mr. Y. C. Verma, learned senior counsel appearing on behalf of the petitioner, duly assisted by Mr. Hemant Kumar and Mr. Anil Singh, learned Special Public Prosecutor for the Vigilance as well as Mr. Ajay Mishra, learned Additional Public Prosecutor for the State.

The application for grant of bail to the petitioner, above named, who has been made accused and put behind the bar in connection with Gandhi Maidan P. S. Case No. 515 of 2017 registered for the offences punishable under Sections 471, 409, 420 and 120(B)/34 of the Indian Penal Code and Sections

13(1) (c) and (d) read with Section 13(2) of the Prevention of Corruption Act, 1988.

The prosecution case is based on a written report filed by the Executive Engineer of Public Health Division, East Patna alleging therein that under the Swakchch Bharat Mission (Rural) and Lohiya Swakchchta Yojna sponsored by the Central Government and the State Government toilets were to be constructed by the Public Health Engineering Department, Government of Bihar, Patna prior to 2016 but subsequently, the said work has been done by the District Rural Development Agency. In course of the financial audit/inspection, it has been found that a sum of Rs. 14,36,00,000/- approx had been spent by the Development on two schemes within a short period from 01.05.2016 to 23.06.2016 as a result of which huge expenditure in such a short period of time was found, hence, inquiry was ordered to be initiated. On the joint inquiry conducted by Director Audit, D.R.D.A., Patna and the Deputy Development Commissioner, Patna, a deep rooted criminal conspiracy transpired. It has come that under a conspiracy Rs. 12,18,00,000/- approx had been transferred to the account of some of the NGOs by the office of P.H.E.D., Patna and by this way, defalcated the huge public money.

Learned senior counsel appearing on behalf of the petitioner submitted that the name of the petitioner surfaced in course of investigation, when it transpired that co-accused Biteshwar Prasad Singh, who happens to be an Accountant in the P.H.E.D. along with other co-accused persons transferred huge amount to different bank accounts of some of the NGOs including Shiv Seva Sansthan of which the petitioner is secretary. He also drew the attention of this court towards annexure 2 and 3, on the basis thereof, he submitted that from the recitals of annexure 1 & 2., it is evident that the NGO of the petitioner was selected and ordered to perform the training programme and no other works whatsoever were allowed much less for construction of toilets. The NGO of the petitioner, namely Shiv Seva Sansthan complied with training programme in terms of the directives of the departments and on being fully satisfied with the performance paid total amount of Rs. 6,71,000/-. It is further submitted that the petitioner's NGO was provided only advertisement and training work for erection of toilets and he has nothing to do with the other schemes. It is next submitted that the very institution of the F.I.R. is bad in absence of the NGO being implicated as an accused, as the NGO consists of body of various persons, which always runs by a collective order of the members and for any dereliction of the duty/mismanagement, the secretary of the NGO cannot be held sole responsible. It is further submitted that the entire case is based on documents, which are in the custody of Vigilance and now the Vigilance after completing the investigation, submitted charge sheet and as such, keeping the petitioner behind the bar would serve no further purpose in as much as he is in custody since 08.10.2021. While concluding his submission, it is lastly submitted that the other co-accused persons having similar allegation have already been granted bail by learned coordinate Bench of this Hon'ble Court in Cr. Misc. No. 47474 of 2019 vide order dated 16.06.2020 and Cr. Misc. No. 20967 of 2020 vide order dated 13.11.2020.

On the other hand, learned counsel for the Vigilance vehemently opposes the bail application and submits that during the course of investigation, ample materials have come against the petitioner, which would also reveal from the case diary, and it would be evident that the petitioner being secretary of the NGO Shiv Seva Sansthan in connivance with Vinay Kumar Sinha, Executive Engineer and the accountant Biteshwar Prasad Singh got transferred Rs. 48 Lakhs in the account of his NGO at main branch, Patna as well as Rs 53

Lakhs in the account of his NGO in the Axis Bank Branch, Darveshpur and withdrew the aforesaid amount and embezzled the same, which were meant for payment to the beneficiaries of the scheme. He also drew the attention of the court towards paragraph nos. 12, 13, 78, 196, 258 and 262 of the case diary and on the strength of the aforesaid statement, he submitted that in course of inquiry, it has come that in between 25.05.2016 to 14.06.2016 a sum of Rs. 46,75,000/- was transferred in the account of the NGO at Main Branch, Patna and further Rs. 53,22,000/- was transferred in the account of NGO in the Axis Bank, Branch in between 12.05.2016 to 17.05.2016 but no explanation has been given as to under what head, he has received such a huge amount and surprisingly, the amount has been withdrawn immediately from both the accounts and on 10.11.2017, when the account was verified in the first account only Rs. 985/- was found and in the second account the remaining amount was Rs. 338/- which facts speak volume against the petitioner. It is next submitted that even the co-accused persons Biteshwar Prasad Singh and Vinay Kumar Sinha confessed their involvement in defalcation of huge Government money in connivance with the NGO. It is last submitted that the petitioner is also named in three other criminal cases as is evident from the paragraph 3 of the application.

Regard being had to the submissions made on behalf of the parties and taking into account the cogent material available on record, inter alia, huge Government money has been transferred in the two accounts of the NGO, and the same has also been withdrawn by the petitioner immediately, but there is no explanation for the same apart from the criminal antecedent of the petitioner, this court is not persuaded to enlarge the petitioner on bail for present, however, considering the fact that the investigation of the crime is already complete and the prosecution case rests upon the documents, which are now in the custody of the Vigilance and no further custodial inquiry is required. The petitioner will be at liberty to renew his prayer for bail after framing of charge.

Accordingly, the present application stands dismissed with aforesaid liberty.

**(Harish Kumar, J)**

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