

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35170 of 2021

Arising Out of PS. Case No.-178 Year-2020 Thana- SOHSARAI District- Nalanda

MD. JAHANGIR S/o Basiruddin Resident of Ward No. 2, Simari
Bakhatiyarpur, District- Saharsa, At present Posted on the Post of A.S.I. in
Soharsarai, Police Station, District- Nalanda

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Arvind Prasad Singh, Advocate

For the Opposite Party/s : Mr. Chandra Bhushan Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 19-07-2022 Heard learned counsel for the petitioner and learned A.P.P.
for the State.

Let the defect(s), if any, be removed within a period of
four weeks.

The petitioner apprehends his arrest in a case registered
for the offences punishable under Section 171(B) of the Indian Penal
Code and Sections 7, 12 and 13(D) of the Prevention of Corruption
Act.

Learned counsel for the petitioner submits that petitioner
is a person with clean antecedent and the officer-in-charge of the
concerned police station has instituted the present FIR alleging that
on 08.10.2020 one viral Whatsapp video message was received on
his mobile phone and after seeing the same he came to know that
petitioner, who is posted as an A.S.I, Soharsarai P.S., was sitting on a
roof of a house probably belonging to him situated at Kagazi



Mohalla with two persons wearing white and red shirt respectively and were talking about plying of sand loaded tractor and trucks illegally upon which the petitioner directed them to pay Rs.5,000/- as entry fee per month for one vehicle. It is submitted in the viral video two persons were heard saying about plying of ten vehicles for which the petitioner demanded bribe of Rs.15,000/- but after negotiation they became ready and paid Rs.14,000/- which the petitioner kept in his pocket and thereafter the petitioner permitted the aforesaid two persons to ply their sand loaded vehicles in illegal manner in the area of his police station. It is alleged that the viral video also reveal that the petitioner gave them a code word as Subodh in case of any problem or seizure. It is alleged that the viral video also disclose that they had earlier given money to the driver Gautam and the accused seen in the viral video were identified by the local people as Suraj Yadav and Diwakar Yadav @ Karu.

Learned counsel for the petitioner further submits that petitioner has been falsely implicated in the present case as he is posted as A.S.I. and under the BMMC Rules, 1972, it is the mines department which is competent for apprehending or seizing sand excavated on account of illegal mining. The police has no role to play in any illegal activity, as such, there was absolutely no occasion for the petitioner to indulge in such activity. It is next submitted that the petitioner was posted in the same police station where the present FIR came to be instituted by the officer-in-charge when the officer-



in-charge instead of instituting the FIR should have intimated the superior authority about the viral video so that prior to instituting an FIR the authenticity of the viral video could have been verified.

Learned A.P.P. for the State opposes the prayer for anticipatory bail of the petitioner and submits that no doubt under Section 40 of the BMMC Rules, 1972, it is the officers of the mines department who are competent to file complaint with regard to illegal mining. Section 379 of the Indian Penal Code gets attracted, since, it is a cognizable offence, as such, police has immense power and can even institute an FIR. It is also submitted that there is absolutely no bar in law to institute an FIR by a police officer in the event he comes to a conclusion that the sand which has been excavated, lifted from the mining area is by a person who is not a valid lessee. Learned A.P.P. next submits that the petitioner is holding a post which is a very responsible post and his conduct is reprehensible, as such, officer pollute the department. Learned A.P.P. further submits that it absolutely does not stand to reason that for such a serious charge why no departmental proceeding has been initiated against this petitioner.

Considering the submissions made by the learned A.P.P., the Court is not inclined to extend the privilege of anticipatory bail to the petitioner in connection with Special Case No. 29 of 2020 arising out of Sohsarai P.S. Case No. 178 of 2020 pending in the Court of learned Special Judge, Vigilance, Patna/successor Court.



Accordingly, prayer for anticipatory bail is rejected.

Let a copy of this order be communicated to the Superintendent of Police, Nalanda where the petitioner is posted as the Court leaves it to his wisdom to act in accordance with law.

(Satyavrat Verma, J)

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