

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.35780 of 2021**

Arising Out of PS. Case No.-20 Year-2018 Thana- VIGILANCE District- Patna

RAKESH KUMAR, aged about 50 years, G-Male, Son of Sri Subodh Kumar,  
Resident of Bari Mathiya, Mahadeva Road, P.S.- Arrah Town, Dist- Bhojpur.

... .. Petitioner

Versus

The State of Bihar through Vigilance, Patna, Bihar

... .. Opposite Party

**Appearance :**

|                        |   |                                                                                            |
|------------------------|---|--------------------------------------------------------------------------------------------|
| For the Petitioner     | : | Mr. N.K. Agarwal, Sr. Advocate and Mrs. Mira Kumari, Advocate                              |
| For the Opposite Party | : | Mr. Anjani Kumar, Sr. Advocate, Mr. Arvind Kumar and Mrs. Archana Palkar Khopde, Advocates |

**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**

CAV ORDER

- 3      22-01-2022                      1. Heard learned Senior Counsel Mr. Nawal Kishore Agrawal for the petitioner and learned Senior Counsel Mr. Anjani Kumar for the Vigilance Department, Government of Bihar, through Virtual mode.
2. Learned counsel for the petitioner is directed to remove the defects, as pointed out by the office, within a period of four weeks after restoration of normalcy.
3. The petitioner seeks anticipatory bail in connection with Spl. Case No. 28(A)/2018 arising out of Vigilance P.S. Case No. 20/2018 initially registered for the offences under Section 7 of the Prevention of Corruption Act, 1988 (for short P.C. Act). Later on, Section 13(2) r/w 13(1)(d) of the P.C. Act was also added.
4.      The      prosecution      story      is      that      the



Informant/Complainant gave a written report dated 14.05.2018 before the Superintendent of Police-cum-Officer-in-Charge Vigilance, alleging that the Informant/Complainant was given work order for construction of road and drainage in Ward No.12 of Mohaniya Nagar Panchayat. The estimated cost of the said work was Rs. 2,50,000/-. After completion of the aforesaid work when the Informant/Complainant asked for his payment, the petitioner being the Executive Officer of the concerned Panchayat demanded commission of 4% of Rs. 2,50,000/- for himself and 1% for his clerk namely, Md. Esha (co-accused), amounting to Rs.12,500/- in total. One constable, namely, Manikant Singh, was deputed by the Vigilance as Verifier for verifying the allegation levelled by the Informant/Complainant.

The Verifier Constable accompanying the Informant/Complainant on 16.05.2018 went to the office of Nagar Panchayat, Mohaniya, and met the petitioner. When the Informant/Complainant asked about his payment from the petitioner, the petitioner told him to talk to his clerk Md. Esha (co-accused). Thereafter, the Informant/Complainant and Verifier Constable both met co-accused Md. Esha in office, whereupon Md. Esha demanded 4% commission for the petitioner and 1% for himself i.e., total 5% of Rs.2,50,000/-



amounting to Rs.12,500/-.

The Verifier Constable submitted a report dated 17.05.2018 before S.P. Vigilance, founding the allegation levelled by the Informant/Complainant to be true against the petitioner and co-accused Md. Esha.

On the basis of the aforesaid written report of the Informant/Complainant and the report dated 17.05.2018 of the Verifier Constable, the present F.I.R. was instituted on 17.05.2018, only against co-accused Md. Esha under Section 7 of the P.C. Act, 1988. Thereafter, the investigation proceeded and a trap team was constituted which, on 18.05.2018, caught co-accused Md. Esha at his office red handed.

5. Learned Senior Counsel Mr. N.K. Agrawal appearing for the petitioner submits that the petitioner has got no criminal antecedent. There is no allegation of tampering with the evidence alleged against the petitioner. The petitioner has falsely been implicated in the present case. Investigation in this case has been completed and charge sheet against the petitioner has already been submitted. He further submits that the petitioner is not named in the F.I.R. Learned Senior Counsel has also submitted that initially Charge Sheet No. 86/18 dated 11.07.2018 was submitted against co-accused Md. Esha who



was arrested red-handed. The investigation against the petitioner was kept open and much later a Supplementary Charge Sheet No. 29/19 dated 20.05.2019 has been submitted against the petitioner. Moreover, it is also submitted that co-accused Md. Esha has been enlarged on regular bail by the court below itself. It is further pointed out on behalf of the petitioner that the petitioner has always co-operated during the investigation, which is evident from the fact that the petitioner readily gave his voice sample before F.S.L., Patna, on 13.09.2018. The petitioner undertakes that he shall co-operate during the trial. Lastly, the petitioner is ready to deposit an amount of Rs. 2,00,000/- (Rupees Two Lacs) in the court below, which shall be subject to the final outcome of this case.

6. Per Contra, learned Senior Counsel Mr. Anjani Kumar appearing for the Vigilance has vehemently opposed the prayer for grant of anticipatory bail to the petitioner. He submits that the offence alleged against the petitioner is a grave and serious offence which has been committed against the society at large. Further, sanction for prosecuting the petitioner has already been obtained by the Vigilance and charges in departmental proceeding has also been framed against the petitioner. Furthermore, he has drawn the attention of this Court towards



paragraph 14 of the counter affidavit filed by him wherein the transcript of secret audio recording of the conversation between the petitioner and Informant/Complainant is reproduced which is claimed to have been recorded by the Verifier Constable during verification on 16.05.2018. It is submitted on behalf of the Vigilance that during further investigation the sample of voice of petitioner was taken and sent for scientific examination at F.S.L., Patna, and the report of the same indicates the involvement of petitioner in this case.

7. After hearing the arguments advanced by both the sides and perusal of the material available on record, it transpires that the report of the Verifier Constable, which is the basis of the present F.I.R., reveals that the petitioner has not demanded any bribe and has only asked the Informant/Complainant to talk to co-accused Md. Esha, who happens to be his sub-ordinate. It is the co-accused who has made such demand and therefore, the present F.I.R. was registered only against him. Although, the prosecution claims that on 16.05.2018, during verification, a secret audio recording of the conversation between the petitioner and Informant/Complainant was done by the Verifier Constable, wherein the petitioner has allegedly demanded illegal



gratification from the Informant/Complainant. However, surprisingly neither the report of the Verifier Constable dated 17.05.2018, based upon which the present case has been registered, whispers even a word regarding any such secret audio recording nor the petitioner was made an accused at the time of registration of the F.I.R. Also the fact that the report, dated 17.05.2018, of the Verifier Constable does not mention anything regarding secret audio recording of the conversation between him and petitioner as claimed to have recorded on 16.05.2018 has not been denied by the Vigilance anywhere in the counter affidavit. It is also evident from the perusal of the record that initially charge sheet was submitted only against co-accused Md. Esha and much later charge sheet against the petitioner has been submitted. Further, the investigation in the case has already been completed and it is evident that the petitioner has co-operated in the investigation. Taking into account the aforesaid reasons, this Court is of the considered opinion that the petitioner is entitled for grant of anticipatory bail.

8. At this juncture, it is also necessary to indicate here that this Court while considering the prayer made in the present anticipatory bail application has also taken note of the



exponential rise in number of covid cases due to the outbreak of third wave of Covid-19 pandemic. Further, this Court can also not lose sight of the fact that the condition of jails is not conducive and suitable to the present situation which has arisen due to the sudden rise in covid cases.

9. Considering the aforesaid facts and circumstances, the petitioner, above named, is directed to deposit an amount of Rs. 2,00,000/- (Rupees Two Lacs) in the court below, which shall be subject to the final outcome of this case. On doing so, the petitioner, above named, in the event of arrest or surrender before the learned court below within a period of twelve weeks from today, be released on anticipatory bail on his personal bond to the satisfaction of learned Special Judge, Vigilance, Patna, in connection with Special Case No. 28A/2018 arising out of Vigilance Case No. 20/2018, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

Once the normalcy is restored, the petitioner shall furnish bail bonds of Rs. 25,000/- (Rupees Twenty-Five Thousand) with two sureties of the like amount each within a period of eight weeks to the satisfaction of the court concerned in connection with the aforesaid case.

10. Further, it is directed that the petitioner shall co-



operate in the trial and he shall remain present before the trial court on each and every date fixed by the trial court. In case, the petitioner fails to appear before the trial court on two consecutive dates, without any justified reason, the court below will be at liberty to cancel the bail bonds of the petitioner.

**(Sudhir Singh, J)**

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