IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37523 of 2022

Arising Out of PS. Case No.-81 Year-2017 Thana- VIGILANCE District- Patna

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Sultanpet Munilakkappa Raju @ S. M. Raju, Son of Sri Munilakkappa, Resident of Munilakkappa, No.- 11, RBI Colony, Anand Nagar, Bangalore North, Bangaluru, Karnataka, 560024, Local address at B-3/68, Bailey Road, Patna. ... ... Petitioner.

Versus

The State of Bihar through Cabinet Vigilance, Patna. Bihar
... ... Opposite Party.

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Appearance :
For the Petitioner : M/s Y.V. Giri, Sr. Advocate, Ashish Giri, Sumit Kumar Jha, Riya Giri and Devashish Giri, Advocates.
For the Vigilance : Mr. Anil Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
C.A.V. ORDER

5 25-11-2022 Heard Mr. Y.V. Giri, learned senior counsel for the petitioner and Mr. Anil Singh for the Vigilance.

2. Learned counsel for the petitioner undertakes to remove the defects, as pointed out by the office, within four weeks. In the eventuality of non-removal of defects within undertaken period, the office will place the matter before the Bench.

3. The petitioner apprehends his arrest in Patna Vigilance Case No. 81 of 2017, giving rise to Special Case No.343 of 2017, registered for the offences punishable under Sections 406, 409, 420, 467, 468, 471, 477A & 120B of the Indian Penal Code

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and Section 13 (2) read with 13 (1) (d) of the Prevention of Corruption Act pending in the Court of learned Special Court Vigilance-I, Patna.

4. The petitioner has moved earlier before this Hon'ble Court for grant of anticipatory bail by filing Criminal Miscellaneous No. 17156 of 2018 and his prayer was rejected vide order dated 01.05.2018.

5. On query of this Court, whether second anticipatory bail application is maintainable? Learned Senior Counsel for the petitioner submitted that earlier anticipatory bail of the petitioner was rejected vide order dated 01.05.2018 and, thereafter, much development has taken place i.e. (i) Charge Sheet having been filed dated 25.04.2019. (ii) Cognizance having been taken dated 26.04.2022. (iii) The Accountant General (Audit) has been pleased to drop the objection of Government Revenue loss dated 12.04.2019. (iv) Order dated 15.03.2021 passed in Arbitration Case No. 11 of 2018 in favour of I.I.M. upholding its claim of payment arising

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out of the Agreement in question. (v) Co-accused Shri Sarad Kumar Jha having been granted Bail by this Hon'ble Court dated 25.08.2018 in Criminal Misc. No. 49512 of 2018. (vi) Co-accused K.P. Ramaiah having been granted Bail by the Court of Learned Special Judge (Vigilance) in Special Case No. 343 of 2017 vide order dated 08.05.2019.

6. It is pertinent to state here that co-accused, namely, Shri Sarad Kumar Jha and K.P. Ramaiah have been granted regular bail but learned senior counsel for the petitioner tacitly mentioned that they have been granted bail and, for the reasons best known to him, avoided to clearly mention it.

7. Learned senior counsel appearing on behalf of the petitioner submitted that there is no allegation in the F.I.R. against the petitioner having received any amount from the company or any other beneficiary. The offence of criminal breach of trust under Section 406 of IPC is not made out as there being no allegation of

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having misappropriated the fund or converted the fund for its own use. Likewise Section 409 of IPC is also not attracted. Similarly the offence of cheating under Section 420 of IPC also not made out as there being no allegation against the petitioner of having deceived anyone fraudulently or dishonestly inducing such person to deliver any property to any person. It is further submitted that offence under Section 467 & 468 IPC also not made out as there is no allegation in the F.I.R. against the petitioner of having forged any document. In fact, from the F.I.R. itself it is evident that the action was in accordance with the term of MOU and as per the decision taken in the manner prescribed by the appropriate authority. The offence under Section 471 & 477A of IPC being bailable, whereas Section 120B of IPC is not attracted. It is next submitted that the petitioner has never misused his official position and the act was done *bona fidely* in accordance with the terms of the MOU and as per the decision of the committee and

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hence, none of the provisions of Prevention of Corruption Act being attracted therein.

8. It is further submitted that in the light of the evidence and investigation conducted by the Investigating Officer after submission of the charge-sheet, it is apparent that the allegation made in the F.I.R. has been limited only to certain issues and that also is untenable and without proper consideration of the relevant facts of the case. The allegations made against the petitioner are wholly misplaced and lacking evidence to draw such conclusion and also in complete ignorance of the various factual aspect of the matter. It is lastly submitted that the matter was adjudicated in Arbitration Case No.11 of 2018 and vide order dated 15.03.2021, the Hon'ble Arbitrator has taken note of the decision of the office of the Accountant General dated 12.04.2019 and was awarded in favour of the claimant therein i.e. IIM finding that it consisted of two schemes meant for online certificate and examination and thus it was held

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that the claimant was entitled to retain the amount already paid and respondent is not entitled to recover from it and that the claimant was further entitled for payment of the work along with interest done by it.

9. With regard to maintainability of second anticipatory bail application, learned senior counsel, relying upon a recent decision of the Hon'ble Apex Court in the case of **Satender Kumar Antil Vs. C.B.I. & Anr.**, reported in **2022 SCC Online SC 825**, submitted that in the said decision several parameters have been laid down for grant of bail.

10. Mr. Anil Singh, learned counsel appearing for the Vigilance vehemently opposing the prayer for bail submitted that the allegation against this petitioner pertains to large scale corruption in the schemes of Bihar Mahadalit Vikas Misson (hereinafter BMVM) established under the S.C./S.T. Welfare Department, Government of Bihar, which revealed the cognizable offence committed by the petitioner and others. The BMVM was established

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and several schemes were launched by the Government of Bihar for the welfare of S.C./S.T. For instance, the schemes like Dashrath Manjhi Kaushal Vikas Yojna (hereinafter referred to as 'the DMKVY'), C.M. Mahadalit Poshak Scheme, Special Schools and Hostels, to name a few. Under the DMKVY, boys and girls of the community had to be given free technical education so that they may get employment. The BMVM was established in 2007 but technical training was introduced in the year 2010. The Vigilance enquiry looked into the financial irregularities as well as criminality committed in the name of training (Examination and Certification) of the students in Microsoft Office Trade in which the accused petitioner Sri S.M. Raju the then Chief Executive Officer, Bihar Mahadalit Vikas Mission, Patna was clearly found to have conspired with the named accused public servants, Sri Sarad Kumar Jha and others and committed the Acts for which the instant Vigilance P.S. Case No.81/2017 dated 23.10.2017 u/s 406/409/ 420/

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467/468/471/477A/120B of I.P.C. and 13(2)r/w 13(1)(d) of the P.C. Act, 1988, was registered against Sri S.M. Raju and others.

11. In course of further investigation, on the basis of materials collected (including sanction for prosecution from the competent authority) a supplementary charge-sheet no.20/19 dated 25.04.2019 against (1) Sri S.M. Raju, then Chief Executive Officer, BMVM, Patna (2) Sri K.P. Rammaih, then Chief Executive Officer, BMVM, Patna (3) Sri Ramashish Paswan, then Project Director, BMVM, Patna (4) Sri Prabhat Kumar, then Mission Director, BMVM, Patna (5) Smt. Devjani Kar, then State Project Officer, BMVM, Patna (6) Sri Umesh Manjhi, State Project Manager, BMVM, Patna and also against (7) Sri Saurav Basu, then Vice President Operation, SRNH (8) Sri Jaideep Kar, then Head Strategic Project, IIIM Ltd. u/s 406/409/420/467/468/ 471/ 477A/120B of I.P.C. and 13(2) r/w 13(1)(d) of the P.C. Act, 1988 submitted

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against the accused petitioner in the court of learned Special Judge, Vigilance, Patna. Relevant portion of charges found true against petitioner has been annexed by him as Annexure-3 to the petition.

12. The following materials have been surfaced during course of investigation:

(i) Sri S.M. Raju was posted as Chief Executive Officer, BMVM, Patna w.e.f. 20.02.2013-21.01.2014 and 20.11.2014-23.02.2016.

(ii) On the basis of Expression of Interest (EOI), Sri Ram New Horizon (hereinafter referred as to 'SRNH') was chosen for imparting training and examination and certification in the MS-Office trade in all 38 districts of Bihar from the selected trainees of BMVM. As per the terms of agreement dated 18.10.2011 linked between BMVM and SRNH, agency was given work order for imparting training of 40 trainees in each batch at the rate of Rs.4081/- per trainee including examination and certification in the MS-Office trade.

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13. As per the records of BMVM a list of 3445 number of students had received training in MS-Office trade conducted by S.R.N.H.

(iii) Para 09 of the aforesaid agreement provide that a total of 70% out of Rs.4081/- per trainee was payable to SRNH by BMVM only after completion of training whereas rest of 30% per trainee was payable only on the completion of online examination and certification of the trainees in all 38 districts of Bihar based on audited utilisation certificate.

14. Sri S.M. Raju, the then Chief Executive Officer, BMVM without ascertaining the aforesaid fact and the fact that no examination certification of the trainees was ever conducted by SRNH, willfully caused wrongful payment of Rs.27,41,207/- dated 15.10.2015 at the expense of government money.

(iv) Without assessing the usefulness of aforesaid agreement dated 18.10.2011 and without imposing any penalty to SRNH, accused petitioner

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without inviting any Expression of Interest (EOI) for imparting training MS-Office trade, issued a work order to SRNH vide agreement dated 07.05.2013 and 06.11.2013 respectively under DMKVY and SCA schemes, in connivance with SRNH in violation to Bihar Financial Rule, 2005. That several changes were made in the aforesaid agreement and conditions in the present agreement were diluted from the first agreement dated 18.10.2011 in order to suit SRNH for instance cl.(9).

(v) SRNH sent a list to BMVM of total no. of 6128 trainees being imparted trainee in MS-Office trade under DMKVY and under SCA scheme i.e. 3981 no. of students under DMKVY and 2147 under SCA scheme. But no examination and certification of said trainees was conducted by SRNH. But despite knowing this fact the accused petitioner had wrongfully paid a sum of Rs.1,81,04,096/- to the agency SRNH in violation of the terms of agreement (Details of payment annexed as Annexure-A to the counter affidavit).

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(vi) The BMVM has allotted the work of examination and certification in MS-Office trade to IIIM Ltd. The company of the accused Sri Sarad Kumar Jha without inviting any EOI at the rate of 2000/- per trainee taken from training agency SRNH.

15. But several irregularities/illegalities were committed by the IIIM Ltd. but the accused officials of BMVM made wrongful payment to Sri Sarad Kumar Jha for which AG, Bihar has conducted audit in BMVM w.e.f. 15.04.2013 to 29.04.2013 during the period of Sri S.M. Raju.

16. The audit report questioned the rationale behind the payment of Rs.62,40,200/- to IIIM Ltd. without conduction of any examination and non-certification of the trainees by it. The audit report also indicted the officials of the BMVM for not cancelling the work order dated 23.11.2011 issued to IIIM Ltd. for not completing the work within the stipulated period of 22.11.2012.

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17. The accused petitioner therefore was well acquainted of the aforesaid development and despite knowing this fact that no list of trainees for conduction of examination and certification in MS Office Trade was ever furnished by IIIM Ltd. to the BMVM and no such examination was conducted by it, caused wrongful payment of Rs.18,30,801/- dated 01.07.2013 and 24,88,501/- dated 21.05.2015 to Sri Sarad Kumar Jha of IIIM Ltd.

18. With regard to the submission made regarding the arbitration proceeding, learned counsel for the vigilance submitted that the arbitration proceeding is not to be effected by criminal case. It is submitted that the arbitration proceeding was confined to the terms of the agreement which in fact had no jurisdiction to examine the criminality involved in the process of implementation of scheme as well as payment specially when the authorities of MBVM was a partner in conspiracy in alleged defalcation. The Arbitral Proceeding

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was a proceeding between the firm and the MBVM the conduct of whom is in question in the criminal proceeding and charge-sheet has been submitted and the court has taken cognizance. The award passed by Arbitrator do not absolve them of the criminality of their conduct. During arbitration proceeding, it was also pointed out to Arbitrator that removing of objection by Accountant General is under enquiry and investigation of state official. The Arbitrator at page 148 of the brief further held that the police investigation matter is separate matter which cannot be interfered with the present arbitration proceeding as such it is submitted that the petitioner cannot taken advantage of any finding of the learned Arbitrator during the arbitral proceeding so far as the criminal case is concerned. The issue with regard to the criminal investigation was also not before Arbitrator which is apparent from issues framed at page 168 of the brief that present arbitral Proceeding has nothing to do with criminal case which is said to be

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pending and the arbitral proceeding are guided to be arbitration agreement.

19. Having gone through the judgment in the case of **Satender Kumar Antil (supra)**, I found that in the facts and circumstances of the present case it is not applicable.

20. It appears that the petitioner was posted as Chief Executive Officer, Bihar Mahadalit Vikas Mission, Patna w.e.f. 20.02.2013-21.01.2014 and 20.11.2014 - 23.02.2016 on the basis of Expression of Interest (EOI), Sri Ram New Horizon (hereinafter SRNH) was chosen for imparting training and examination and certification in the MS-office trade in all 38 districts of Bihar from the selected trainees of BMVM. As per the terms of agreement dated 18.10.2011 linked between BMVM and SRNH, agency was given work order for imparting training of 40 trainees in each batch at the rate of 4081/- per trainee including examination and certification in the MS-Office trade. As per the records of

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BMVM a list of 3445 no. of students had received training in MS-Office trade conducted by SRNH. Para 09 of the aforesaid agreement provide that a total of 70% out of Rs.4081/- per trainee was payable to SRNH by BMVM only after completion of training, whereas rest of 30% per trainee was payable only on the completion of online examination and certification of the trainees in all 38 districts of Bihar based on audited utilization certificate. The petitioner, the then C.E.O, BMVM without ascertaining the aforesaid fact and the fact that no examination certification of the trainees was ever conducted by SRNH, willfully caused wrongful payment of Rs. 27,41,207/- dated 15.10.2015 at the expense of government money without assessing the usefulness of aforesaid agreement dated 18.10.2011 and without imposing any penalty of SRNH, accused petitioner without inviting any Expression of Interest (EOI) for imparting training in MS-Office trade, issued a work order to SRNH vide agreement dated 07.05.2013 and

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06.11.2013 respectively under DMKVY and SCA scheme, in connivance with SRNH in violation of Bihar Financial Rule, 2005. Several changes were made in the aforesaid agreement and conditions in the present agreement were diluted from the first agreement dated 18.10.2011 in order to suit SRNH for instance.

21. It further appears that SRNH sent a list to BMVM of total no. of 6128 trainees being imparted trainee in MS-Office trade under DMKVY and under SCA Scheme i.e. 3981 no. of students under DMKVY and 2147 under SCA scheme. But no examination and certification of said trainees was conducted by SRNH. But despite knowing this fact the accused petitioner had wrongfully paid a sum of Rs. 1,81,04,096/- to the agency SRNH in violation of the terms of agreement.

22. It also appears that the petitioner, the then C.E.O., in the capacity of the Chairman of the Executive Committee by abusing his official position and in order to accommodate the Mission Director of BMVM, Sri

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Ramashish Paswan, after his retirement, co-accused in the BMVM, called the meeting of the Executive Committee, without a sufficient quorum, and got a resolution passed for creating a new post called Project Management Unit (PMU). After retirement, Sri Ramashish Paswan jointed the post of Mission Director in PMU. So that Sri Paswan get higher salary, an EOI was prepared by himself and the same was accepted by the petitioner. It is clear that to help training agencies, under a conspiracy and doing training programme on line, the petitioner, the then C.E.O., created the position of Project Director and just after retirement his favourite, Sri Ramashish Paswan was re-appointed through PMU, so that the way of allotment and payment of illegal fund with the help of training agencies could be cleared.

23. Having heard the parties, in my opinion, an officer more so the petitioner, who is a senior IAS Officer is required to exercise higher standards of honest and

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integrity as he deals with money of the public exchequer. Every officer is required to take all possible steps to protect the interest of state exchequer and to discharge his duties with utmost integrity, honesty and with full devotion. But it appears that, the petitioner, being the senior IAS officer of the State, has failed to discharge his duties and in connivance with other co-accused played a nefarious game at the cost and interest of public exchequer.

24. As there are serious allegations of misappropriation of public funds, and corruption one punishable under Section 409 IPC and also under Section 13 of the Prevention of Corruption Act, 1988. After considering the gravity of offence, circumstances of the case, particularly, allegations of corruption and misappropriation of public funds released for Scheduled Castes and Scheduled Tribes communities, I am not inclined to enlarge the petitioner on anticipatory bail.

25. The prayer for anticipatory bail of the

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petitioner is hereby rejected. However, the petitioner is directed to surrender before the learned Court below within six weeks from today and seek regular bail and the learned Court below would pass order in accordance with law without being prejudiced by this order.

(Anjani Kumar Sharan, J)

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