

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64426 of 2021

Arising Out of PS. Case No.-268 Year-2021 Thana- KANTI District- Muzaffarpur

Tahir Hasnain @ Tahir Husain Son of Md. Hasnain Resident of Village -
Chainpur, P.O.- Damodarpur, P.S.- Kanti, District - Muzaffarpur.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Rashid Izhar, Adv.

For the Opposite Party/s : Md. Aslam Ansari, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 05-07-2022 This application has been listed under the heading
“For Orders”.

Registry has pointed out several defects in the present
application.

Mr. Rashid Izhar, learned counsel for the petitioner
submitted that the defects are mainly because only e-filing of
the applications are permitted by the Court. He submitted that
the defects can be removed only after filing of hard copy is
permitted. He undertook that even if the applications are heard
and disposed of on merit, in due course of time, when the Court
would permit filing of hard copy, the defects pointed out by the
registry would be removed.

In view of the submissions made by the learned
counsel for the petitioner, with consent of the parties, the



application has been taken up for hearing on merit.

The petitioner seeks pre-arrest bail in connection with Kanti P.S. Case No. 268 of 2021 registered for the offences punishable under Sections 406 and 420/34 of the Indian Penal Code and Section 52A of Waqf Act, 1995 (Amendment 2013).

The prosecution case has been launched on the basis of the written information given by one Sakib Hussain, Assistant-cum-Inspector, Bihar State Siya Waqf Board. He has alleged in his report submitted to the S.H.O. of Kanti Police Station, Muzaffarpur that the petitioner illegally came into possession of Waqf land comprising Thana no. 400, Khata no. 34, Khesra nos. 472 and 473 admeasuring 1.69 acres situated at Chainpur in the district of Muzaffarpur. After illegal possession of the said land, he got constructed four shops and delivered them to anti-social elements. He further alleged that the petitioner illegally came in possession of orchard of the Waqf which contains the trees of mango and lichi. Thus, the conduct of the petitioner is punishable under Section 52A of the Waqf Act, 1995.

Mr. Rashid Izhar, learned counsel for the petitioner submitted that the Waqf property registered as Dr. Syed Jamaluddin and Wahidun Nisan Waqf Estate No. 63/Muz. was



dedicated by the great grandfather of the petitioner Dr. Syed Jamaluddin Hussain in the name of private Waqf (Waqf Alal-Aulad) which is created for the benefit of the heirs of the Waqif. In view of the nature of the dedication, Muttawalli was required to be from the family of the Waqif. As such, the father of the petitioner being the grandson of the dedicator continued as Muttawalli of the Waqf Estate. After his death, the petitioner being in the line of succession became Muttawalli of the said Waqf and the same was also recognized by the Bihar State Shia Waqf Board in its meeting vide Resolution No. 11 dated 19.09.2017. The petitioner being Muttawalli is managing the Waqf Estate diligently and properly. He contended that making construction of go-down and shop for the Waqf Estate cannot be alleged to be an offence under any law including Section 52A of the Waqf Act. He further contended that the essential ingredients to constitute the offence punishable under Sections 406 and 420 of the Indian Penal Code are completely missing in the present case.

Md. Aslam Ansari, learned counsel for the State opposed the prayer for bail. He submitted that it is not the stage when it is to be seen as to whether offences under the penal code are made out or not. It will be seen at an appropriate stage after



the investigation would be completed. He contended that from the order passed by the court below, it would be evident that the case is still under investigation and the allegations against the petitioner are of serious nature.

Considering the nature of allegation, the submissions advanced on behalf of the petitioner and the materials available on record, I am inclined to grant pre-arrest bail. He is directed to be released on bail, in the event of his arrest or surrender before the court below, on furnishing bail bond of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate, Muzaffarpur in connection with Kanti P.S. Case No. 268 of 2021, subject to the condition as laid down under Section 438 (2) of the Cr.P.C.

(Ashwani Kumar Singh, J)

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