IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14578 of 2022

Arising Out of PS. Case No.-2 Year-2021 Thana- VIGILANCE District- Patna

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OM PRAKASH Son of Late Bachai Lal Resident of Bhusauli Tola, P.S.- Khulabad, District - Prayagraj, Uttar Pradesh. At present, Financial Advisor V.K.S. University, Ara.

... ... Petitioner/s

Versus

The State of Bihar through Vigilance Department Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Manindra Kishore Singh, Adv,
For the Opposite Party/s : Mr.Rana Vikram Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL ORDER

7 09-01-2023 Heard learned counsel for the petitioner and learned counsel for the Special Vigilance Unit.

Petitioner is apprehending his arrest in connection with Special Vigilance Unit P.S. Case No.02/21, registered for the offence punishable u/s 420/120(B) of the IPC and sections 12 r/w 13(2) r/w 13 (1) (b) of P.C. Act, 1988.

The prosecution case in brief is that Dr. Rajendra Prasad, while working as Vice-Chancellor, Magadh University, Bodh Gaya entered into a criminal conspiracy with the petitioner, who was working as the Financial Advisor of Veer Kunwar Singh University, Ara, and others and in pursuance thereof fraudulently and dishonestly cheated the money of Government of Bihar to the extent of Rs.20 crore approximately during the year 2019-21, in the matter of purchase of various items related to use of University in examination and otherwise. It is further alleged that for the purchase of materials there has to be requisitions of tender and other formalities but ignoring the advice of competent Officer, the accused persons entered into a conspiracy with supplies to raise bill to the extent of Rs.20 crore from Magadh University and Veer Kunwar Singh University both without assessing the requirement and violating the tender procedure and justification of rates etc. It is further submitted that the petitioner and one Jitendra Kumar (Registrar) were pressed into service and they cleared all the fraudulent bill of the suppliers. It is alleged that the accused persons has acquired huge movable and immovable properties.

It is submitted by learned senior counsel for the petitioner that petitioner is quite innocent and has not committed any offence. He has been falsely implicated in this case due to ulterior motive. It is submitted that allegation has been made of cheating the fund of State Government but the State Government had not granted any fund to the University for conducting examination and for library. The petitioner is not appointed by the Vice-Chancellor of Magadh University rather he was deputed by the Chancellor under the University Act, so the allegation that he was pressed into service to clear the fraudulent bill is baseless. The petitioner was deputed and joined the Magadh University on 23.07.2019 as a Financial Advisor. As per section 29 of the the Bihar State Universities Act, 1976 that there would be an Examination Board which consists of Vice-Chancellor as Chairman and Dean Faculties of Arts, Science and Commerce as members, the Examination Board shall render advice to V.C. on conduct of examination, appointment of examiner, setting and moderating question paper. There is proviso in the Section which provides special power to Vice-Chancellor in the matter of question paper. The petitioner being a Financial Advisor was duty bound to look after the expenditure and other Financial matters of the University. It is submitted that the question papers were not printed through open Tendering rather it is a secret document and it is done confidentially by the Approval of Examination Board and here every process was done by other officials and not by the petitioner. Being a Financial Advisor he has examined the financial aspect and found that as per work order, the suppliers had supplied the materials and same was received by the University and on the basis of said OMR sheet and question papers, examination were conducted and results were published. So getting payment of the bill is the right of the firm and it was thus, paid to them. So far as rates of the supplies are concerned, it was compared by the tender committee and approved by the V.C. There is no specific overt act against the petitioner or regarding Veer Kunwar Singh University. Earlier an internal enquiry was conducted by a committee constituted by Chancellor headed by V.C., L.N. Mithila University, Darbhanga for the same allegation made in the F.I.R. In the said enquiry report submitted on 31.07.2021, it was found that the allegations are false and this case has been lodged with ulterior motive. The question papers were ordered much before the deputation of petitioner at Magadh University. It is submitted that cheque issued to accused no.3 and 4 for their supply was not signed by the petitioner, the same was signed by Controller of Examination and Finance Officer. It is submitted that petitioner is not involved in the present case and has been made accused only on the basis of suspicion.

Learned counsel for the Special Vigilance Unit opposed the prayer for bail by submitting that the petitioner was holding the charge of Veer Kunwar Singh University. Reportedly all the materials including books are lying idle without use. No record was submitted by the accused persons regarding the quantum of supply etc. It is further submitted that from perusal para-34 and 32 of the case diary i.e. the statement of witnesses, it shows that they have fully supported the prosecution version and stated that the payment of Rs.15.55 crore were made illegally to the accused no.2 and 3 (the suppliers) on the recommendation of petitioner being Financial Advisor, Magadh University without approval, the syndicate in connivance with other accused persons of this case. The source of information to the Vigilance has disclosed that the payment for purchase of OMR answer sheets and E-Books have been credited in the account of a private person, whose identity could not be traced. It is submitted that perusal of file No.MRSL.- 17/21(a), reflects that besides all the other accused persons, this petitioner has also signed on the proposal of purchasing e-books for which there was no infrastructural facilities, the payment was made after diverting funds from internal examination head which is against the established procedures and establishes the mala fide intention of the petitioner. Further, he also points out that in file No. MRSL.-14/21, relating to payment of rupees of more than 08 Crores (Eight Crores) of OMR question answer sheet, the petitioner has also put his signatures approving the same. In the same very file on 07.05.2021, the petitioner raised objection regarding validity of agreement but curiously enough same day i.e. 07.05.2021 he put his signatures on the proposal relating to payment of bills of Rs.5,61,32,556 and Rs.5,38,73,353 thereby facilitating the payment of Crores of Rupees without there being actual supply of the same. Learned counsel further points out that Section 12A of the BSU Act 1976 (as amended up-to-date) deals with the power and functions of the Financial Advisor, the post which the petitioner is holding. Sub-section 3 of the aforementioned section clearly stipulates that in all proposals having financial implications, the advice of the Financial Advisor shall be mandatory. He also stresses the important role played by the petitioner in embezzlement and misappropriation of the Government fund and draws the attention of the Court towards sub-section 9 of section 12A of the BSU Act which reads as *"9. It shall also be the responsibility of the Financial Adviser to see that all financial matters of the University are dealt with in accordance with the Act, the Ordinance, the Statutes, the University Ordinances, Regulations and Rules framed thereunder"*. It is thus submitted that had the petitioner been careful and diligent, this misappropriation of the Government fund could not have taken place.

Considering the aforesaid facts and circumstances and keeping in view the mandate of section 12 A of the BSU Act, 1976 (as amended up-to-date), I am not inclined to enlarge the petitioner on bail. The prayer for grant of anticipatory bail on his behalf is hereby rejected.

This application is accordingly dismissed.

(Anjani Kumar Sharan, J)

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