IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32109 of 2023

Arising Out of PS. Case No.-254 Year-2022 Thana- GAUNAHA District- West Champaran

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RISHI KUMAR SHARMA @ RISHI SHARMA Son of Rajkishore Sharma Resident of village - Semari Bhawanipur, P.S.- Jogapatti, District - West Champaran.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Kaushal Jha, Sr. Adv.
Mr.Siddharth Aditya, Adv.

For the Opposite Party/s : Mr.Arun Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL ORDER

3 21-08-2023 Heard Mr. Kaushal Jha, learned Senior Counsel for the petitioner assisted by Mr. Siddharth Aditya, Advocate and Mr. Arun Kumar Pandey, learned APP for the State.

2. The petitioner apprehends his arrest in a case registered for the offence punishable u/s 406, 409, 420 and 34 IPC.

3. The prosecution case, in short, is that the District Programme Officer sent a letter to the Police Station for lodging an FIR, as they had started an investigation and found that there was an MR generated with ill intention instead of the real beneficiaries of Pradhan Mantri Awas Yojna-Gramin (PMAY-G). That the wrong card holders were shown outside of the district of Katihar and West Champaran. That in the PRS of 14 Panchayats, there was a possibility that wrong compensation to

the tune of Rs.21.44 was paid and in the investigation report it could be up to 35-40 Lakhs. It was found in the investigation that petitioner and others were responsible.

4. It is submitted by learned Senior Counsel for the petitioner that petitioner is quite innocent and has committed no offence. He has been falsely implicated in this case due to ulterior motive. No such occurrence, in the manner as alleged, has ever taken place. Petitioner is an accountant (MGNREGA) since 13.10.2014 at Gaunaha, West Champaran and his duty is to issue fund transfer order which he has received after following the different stages in the office. The aforesaid fund was transferred to the District Programme Officer (not to the laborers of MGNREGA). It is the petitioner who has made complaint to the higher authorities on 05.08.2022 regarding the wrongful payment to the beneficiaries of Pradhan Mantri Awas Yojna-Gramin. He had already written to the Authorities that there was a conspiracy in the compensation paid in PMAY-G, which is clear from a letter dated 11.08.2022. On the basis of the complaint of the petitioner, the higher official Deputy Development Commissioner, Bettiah, West Champaran constituted a committee of officials for making enquiry on the allegations made by the petitioner regarding illegal payment

under the scheme. The enquiry officials found the allegation made by the petitioner was true and thereafter, he himself was made scapegoat in the matter under a conspiracy of the higher officials. The rural Development Department issued guidelines regarding responsibilities of different officials under MGNREGA scheme. From the aforesaid letter, it is apparent that it is the Panchayat Rozgar Sevak, who verified the account of MGNREGA laborers and on the basis of the aforesaid verification, the aforesaid account will be freezed by DPO. The role assigned to the DPO and Panchayat Rozgar Sevak as per the aforesaid letter clearly establishes the negligence in the present case. The Panchayat Rozgar Sevak has not been made accused in the present case while the petitioner, who had no role in identification of the laborers nor verification of the accounts of the laborers and nor concerned with freezing of accounts has been made accused in the present case. There is no specific allegation against the petitioner and the entire process of sending of money to the beneficiaries lies with the DPO and verification is made by the Panchayat Rozgar Sevak.

5. Learned APP for the State opposed the prayer for bail by submitting that there is specific allegation against the petitioner in the F.I.R. and it has come in the order of the District Rural

Development Agency, West Champaran, Bettiah that it is a case where under a conspiracy with the involvement of Computer Operator, Accountant, Programme Officer using the P.O login ID and password, payment to the beneficiaries to the tune of Rs.55,57,273/- has been done with ill motive. The petitioner, being an Accountant (MGNREGA) was also in charge of Assistant Accountant for the Pradhan Mantri Awas Yojana. For the payment of arrears to the beneficiaries under the PMAY, F.T.O. was formed under the supervision of the petitioner but the same has not been done appropriately and in place of the beneficiaries, by committing irregularity, the amount has been transferred in the accounts of other persons. It is submitted that a detailed S.O.P. was issued from Rural Development Department, Government through letter no.232940 dated 25.05.2015 and in the said S.O.P., role of petitioner being the Accountant (1st signatory) was clearly defined. The petitioner has thus committed fraudulence and violated the MGNREGA Act. Learned APP relied upon the judgment of the Apex Court in the case of ***Ramesh Kumar vs. The State of NCT of Delhi*** in ***Criminal Appeal No.1741 of 2023***, whereby the Apex Court held as follows:

> ***"26. ….. We may, however, not be understood to have laid down the law that in no case should willingness***

> ***to make payment/deposit by the accused be considered before grant of an order for bail. In exceptional cases such as where an allegation of misappropriation of public money by the accused is levelled and the accused while seeking indulgence of the court to have his liberty secured/restored volunteers to account for the whole or any part of the public money allegedly misappropriated by him, it would be open to the concerned court to consider whether in the larger public interest the money misappropriated should be allowed to be deposited before the application for anticipatory bail/bail is taken up for final consideration. After all, no court should be averse to putting public money back in the system if the situation is conducive therefore. We are minded to think that this approach would be in the larger interest of the community. …..”***

Relying upon the aforesaid judgment, learned APP for the State further submits that Departmental proceeding and criminal case are two different aspects, as such, petitioner does not deserve the privilege of anticipatory bail.

6. However, learned Senior Counsel for the petitioner submits that petitioner is ready to return Rs.27,78,637/- in the account of MGNREGA in five installment in a period of one year.

7. Having regard to the facts and circumstances of the case, considering that the petitioner is ready to return Rs.27,78,637/-

in the account of MGNREGA and also considering the Apex Court order passed in the case of ***Ramesh Kumar (supra)*** whereby the Apex Court held that willingness of accused to deposit money as bail condition must be considered only in cases involving public money; not in private cases and in the present case, public money is involved, I am inclined to enlarge the petitioner on bail.

8. Accordingly, let the above named petitioner, be released on ***provisional*** bail for a period of one year, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/Successor Court in connection with Gaunaha P.S. Case No.254 of 2022, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

9. However, the provisional bail of the petitioner shall be confirmed by the learned Court below itself after showing the receipt of deposit of the aforesaid amount.

(Anjani Kumar Sharan, J)

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