**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**CRIMINAL MISCELLANEOUS No.32470 of 2023**

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

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MD.NAQUEE HASSAN Son of Late Md. Afzal Hassan Resident of Mohalla-Juranchhapra Road no. 4, Police Station- Barhampura, District- Muzaffarpur

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr.Jitendra Singh, Sr. Adv.
Mr.Aditya Nath Jha, Adv.

For the Opposite Party/s : Mr.Ram Naresh Ray, APP

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**CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN**

ORAL ORDER

3 21-08-2023 Heard Mr. Jitendra Singh, learned Senior Counsel for the petitioner assisted by Mr. Aditya Nath Jha, Advocate and Mr. Ram Naresh Ray, learned APP for the State.

2. Learned Senior Counsel for the petitioner has filed a supplementary affidavit in the Court today. The same is taken and kept on record.

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

4. The prosecution case, in short, is that the District Programme Officer, filed a written report on 13.12.2022 to the S.H.O. of Gaunaha Police Station with reference to letter no.1726 dated 12.12.2022 issued from Abhikaran Karyalay District Rural Development Agency Officer, West Champaran,

Bettiah, alleging therein that in Gaunaha Block, enquiry was conducted regarding irregularities committed in payment of wages to the MGNREGA workers worked under PMAY-G and in the said enquiry, it was found that on work code of beneficiary of PMAY-G, payment was made to another job card holder by generating MR with ulterior motive and it was revealed that the Bank account of fake Job Card holders belong to persons of Katihar District as well as another block of West Champaran. It was further found that the details reports of P.R.S. of 14 panchayat indicates that Rs.21.44 lac was wrongly paid and it is said that amount can go upto 35-40 lac. As per opinion of enquiry officer, the amount has been sent to the other bank account in a planned manner instead of the Bank accounts of beneficiaries and same has been done repeatedly and accordingly, F.I.R. was lodged against the petitioner and others.

5. It is submitted by learned 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 was the then Programme Officer of Gaunaha Block who joined there in 2021 and after joining, for smooth distribution of wages to the beneficiaries of PMAY of Gaunaha

Block who were 5000 in number, petitioner distributed the Panchayat between three computer operator through letter no.102 dated 18.04.2022. As per detail “S O P”, the computer operator were directed to send the amount in account of beneficiaries and for that after preparation of Master Roll as well as wage list they were directed to send the same to first signatory i.e. Accountant and a copy of the said memo no.102 was also sent to D.D.C. and DPO, West Champaran. It is submitted that due to work load, PO logging password was being used by all the four operator as well as Accountant since prior to joining of petitioner on the post of Programme Officer in the said Block. In all other Blocks also, the Operators and Accountant were using login ID and password and for that honorarium is being paid to them. The petitioner on getting knowledge of the irregularities in payment of wages to beneficiaries, immediately issued letter no.255 dated 22.07.2022 asking about details of payment of wages of MGNREGA in PMAY from P R S and Computer Operator and also directed them to send the correct amount. In compliance of the said letter, P.R.S. of different Panchayat submitted report regarding irregularities in payment of wages to beneficiaries. From perusal of the report of P.R.S., it had come to the knowledge of petitioner that amounts were credited in accounts as different banks and a major portion of the said amount was credited in Central Bank, Khuriyal Branch of Katihar district. It is further submitted that a show cause was asked by the petitioner from the computer operators and Accountant. The reply to the show cause was given by the computer Operators but the Accountant even did not receive the show cause notice. It is further submitted that a six men committee was constituted by the D.D.C., West Champaran and the committee after enquiry submitted a report through letter no.1603 dated 30.11.2022 whereby it is not clear that who is responsible for the irregularities. The D.D.C., West Champaran asked show cause from the petitioner about his role in the irregularity but in that letter also, no allegation of defalcation has been made against the petitioner. No any amount has been defalcated by the petitioner, yet, he undertakes to deposit the amount if any found to be defalcated due to latches on his part. It is specifically mentioned in the supplementary affidavit that a detailed S.O.P. was issued from Rural Development Department, Government of Bihar through letter no.232940 dated 25.05.2015 and in the said S.O.P., role of Accountant ($1^{st}$ signatory) as well as Programme Officer ($2^{nd}$ signatory) has been clearly defined.

From perusal of the aforesaid letter, it is clear that role of petitioner (2nd signatory) has been mentioned in Clause 7 and it is clear that petitioner has not violated any duty cast upon him through said clause. In the disciplinary proceeding initiated against the petitioner, after considering show-caused on behalf of him, in the final conclusion and he was given punishment.

6. 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, the Computer Operator, the Accountant and Programme Officer by using the P.O login ID and password, committed irregularities in payment of wages to beneficiaries to the tune of Rs.55,57,273/-. The petitioner, being then Programme Officer of Gaunaha Block, has committed fraudulence and violated the MGNREGA Act. It has come in the impugned order that as per para-16 and 17 of the case diary, the witnesses have supported the prosecution case. He 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.

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

8. 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.

9. 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.

10. 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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