**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**CRIMINAL MISCELLANEOUS No.33668 of 2022**

Arising Out of PS. Case No.-5 Year-2009 Thana- C.B.I CASE District- Patna

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BINDESHWARI SINGH @ B. D. SINGH Son of late Mithila Prasad Singh Resident of Village - B-26, Housing colony, Kankarbagh, P.S.- Kankarbagh, Distt.- Patna.

... ... Petitioner/s

Versus

The Union of India through Central Bureau of Investigation (CBI). Bihar

... ... Opposite Party/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Asnul, Senior Advocate<br>Mr.Anil Kumar Singh |
| For the Opposite Party/s | : | Mr.Rajeev Nayan (App 231) |

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**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**

ORAL ORDER

6 08-04-2025 Heard learned Senior Counsel for the petitioner and learned counsel for the State.

**2.** The petitioner in the present application has invoked section 482 of the Cr.P.C praying for quashing of the order dated 22.03.2022 passed by the court of Exclusive Magistrate, CBI, Patna in connection with R.C Case No. 05 (A) of 2009 registered under section 406, 420, 471, 120-B of the Indian Penal Code whereby and whereunder the Court had rejected the discharge petition filed on behalf of the petitioner.

**3.** The learned Senior Counsel submits the factual matrix of the prosecution case relevant for the present application being that one A.K. Mishra, DE (Admin), BSNL, O/o GMTD, Katihar; Ramashray Rajak, DE (P&D, BSNL, O/o GMTD, Katihar and some officials from the account section, office of GMTD, Katihar during the period 2004-2006, entered into a criminal conspiracy with M/s Hawks Security Agency, Patna and passed bills for engagement of security guards in different telephone exchange and thereby cheated the BSNL. In pursuance of said conspiracy M/s Hawks Security Agency, Patna, submitted fake bill which was processed and passed by aforesaid accused persons A.K. Mishra, Ramashray Rajak and some officials of account section, office of GMTC, Katihar.

**4.** It was alleged that the above said officials did not follow the DGR Guidelines which were mandatory. M/s Hawks Security Agency, Patna, use to claim and receive amounts for EPF, ESI & Service Tax at the rate of 12%, 4.75% and 8% respectively against the names of security men deployed at various establishments under GMTD, Katihar, from BSNL every month but did not deposit the same amount in the Govt. account and thereby, misappropriated the Govt. money causing huge loss to the department.

**5.** The learned Senior Counsel for the petitioner submits that the main thrust of the allegation is that the firm in question had been awarded work order/contract to provide security guards at different establishments of the B.S.N.L situated within the bounds of Katihar district. The present petitioner holding the power of attorney and therefore having control over the affairs of the aforesaid firm had deposited an amount which was less than the required deposit to be made towards ESI, EPF and Service tax. It is alleged that even though firm had received payments against the work done but had failed to deposit the share of ESI, PF and Service Tax to the tune of rupees 12,35,415/-. It is next submitted that the present case has been filed by the C.B.I. and not by the E.S.I. or the Provident Fund Department who should have instituted the case being the aggrieved party. Further, it has also been emphasized by the learned Senior Counsel that the entire amount has been deposited by the petitioner in the Court below.

**6.** None of the arguments made by the Senior Counsel are appealing to this Court at this stage. The contention that the accused had deposited the deficient amount to and therefore criminal proceedings should not continue is also not appealing. They are fit to be rejected as the offence committed by the petitioner has been investigated by the C.B.I. and after submission of chargesheet cognizance has been taken.

**7.** The Court while considering the application for discharge is required to satisfy itself that sufficient grounds for proceeding with the criminal case is present based on the materials collected by the prosecution. The defense of the accused or the meticulous weighing of the evidence could not be carried out at this stage. To conduct roving enquiry on the merits of the case at this stage would be improper.

**8.** For the foregoing reasons and discussions this application is dismissed with cost.

**(Sandeep Kumar, J)**

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