

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61854 of 2023

Arising Out of PS. Case No.-555 Year-2022 Thana- JAGDISHPUR District- Bhojpur

Ajay Thakur @ Ajay Kumar Thakur, S/O Late Parmanand Thakur, R/O Village- Nagar Panchayat, Jagdishpur, P.S- Jagdishpur, Distt.- Bhojpur, At/P C.-137, Police Colony Anishabad, P.S- Anishabad, Distt.- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 62321 of 2023

Arising Out of PS. Case No.-555 Year-2022 Thana- JAGDISHPUR District- Bhojpur

K. P. Sahu @ Kedar Prasad Sahu, Son of Bindeshwari Prasad Sahu, Resident of Village- Nagar Panchayat, Jagdishpur, P.S.- Jagdishpur, Distt- Bhojpur, At/P Flat No. 202, A.D.M. Marg No. 15, North Patel Nagar, P.S.- Patliputra, Distt- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 10464 of 2024

Arising Out of PS. Case No.-555 Year-2022 Thana- JAGDISHPUR District- Bhojpur

Vijay Narayan Pathak, Son of Late Lalita Prasad Pathak, Resident of Village- Nagar Panchayat Jagdishpur, Police Station- Jagdishpur, District- Bhojpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 61854 of 2023)

For the Petitioner/s	:	Mr. Amit Srivastava, Sr. Advocate
		Mr. Manoj Kumar, Advocate
		Mr. Radha Mohan Pandey, Advocate
For the Opposite Party/s	:	Mrs. Madhuri Lata, APP
For the Complainant	:	Mr. Bijendra Kumar Singh, Advocate
		Mr. Kumar Dhananjay Singh, Advocate

(In CRIMINAL MISCELLANEOUS No. 62321 of 2023)



For the Petitioner/s : Mr. Amit Srivastava, Sr. Advocate
Mr. Manoj Kumar, Advocate
Mr. Radha Mohan Pandey, Advocate
For the Opposite Party/s : Mr. Satyendra Narayan Singh, Advocate
For the Complainant : Mr. Bijendra Kumar Singh, Advocate
Mr. Kumar Dhananjay Singh, Advocate
(In CRIMINAL MISCELLANEOUS No. 10464 of 2024)
For the Petitioner/s : Mr. Amit Srivastava, Sr. Advocate
Mr. Radha Mohan Pandey, Advocate
For the Opposite Party/s : Mr. Parmeshwar Mehta, Advocate
For the Complainant : Mr. Bijendra Kumar Singh, Advocate
Mr. Kumar Dhananjay Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

17 22-08-2025 Heard the parties.

2. The petitioners are apprehending their arrest in connection with Jagdishpur P.S. Case No. 555 of 2022 registered for the offences punishable under Sections 406, 409/34 of the Indian Penal Code.

3. Based upon the written report filed by the Executive Officer, Nagar Panchayat, Jagdishpur it is alleged that a scheme bearing no. 03/2020-21 with respect to R.C.C. construction work of covered drainage from the house of Parshuram Singh to the house of Bhola Mahto was floated for an estimated amount of Rs.24,13,800/-. The agreement amount of the said construction was Rs.23,65,524/- and the sanctioned amount was to the tune of Rs.23.29,103/-.

4. The petitioner in Cr. Misc. No. 61854 of 2023 was holding the post of Junior Engineer and the petitioner in Cr. Misc. No. 62321 of 2023 was the Executive Engineer whereas



petitioner in Cr. Misc. No. 10464 of 2024 was the Executive Officer of Nagar Panchayat, Jagdishpur. Allegedly all the aforementioned accused persons in collusion with the contractor defalcated a huge amount of Rs.20,73,018/- without having executing any work. It is further alleged that the accused persons in collusion with each other got the amount of Rs.23,29.103/- sanctioned without there being any administrative sanction, merely on the basis of measurement book, duly signed and certified by the Junior Engineer and by this way siphon off the amount. Neither on the said agreement, there was signature of contractor nor of the Executive Officer, despite the aforesaid fact, the Executive Officer has passed the work order on 08.05.2020. On inspection, no work was found at place or any evidence has been placed regarding the work having been completed, albeit the sanctioned amount has been withdrawn and thereby defalcated the Government money, for which the Contractor, Junior Engineer are said to be the main culprit and the Executive Officer, Nagar Panchayat, Jagdishpur and Executive Engineer also found responsible for the said defalcation.

5. Learned Advocate for the petitioner in Cr. Misc. No. 61854 of 2023 has submitted that admittedly the estimated



amount has already been sanctioned and thus the contention of the informant that there was no administrative approval appears to be not correct. It is the Executive Officer, who has made payment to the concerned officer, who were discharging his duty in the aforesaid scheme. The Junior Engineer having found the work being completed has prepared the measurement book and submitted before the Executive Engineer and only after the verification of the work, the amount has been released by the Executive Officer of the Nagar Panchayat, Jagdishpur time to time after satisfying the progress of the work. Moreover, it is the Executive Officer, who was the custodian of the said amount. The Junior Engineer, being a lowest rung of officer is bound to follow the order of his senior and accordingly placed the measurement book before the higher officials and only after verification of the measurement book qua the work, issued, payment order and thereupon the payment has been done.

6. So far the petitioner in Cr. Misc. No. 62321 of 2023 is concerned, it is submitted that bare perusal of the F.I.R., it transpired that it is the Junior Engineer, who was obliged to prepare the measurement book and submitted before the Executive Engineer along with the certificate regarding the completion of work, based upon which approval has been



accorded and thereupon the amount has been released by the Executive Officer of Nagar Panchayat. The F.I.R. also suggests the thrust of allegation is levelled against the Junior Engineer and the contractor, who are manifestly responsible for such defalcation. The role of the petitioner being Executive Engineer is quite limited.

7. The petitioner in Cr. Misc. No. 10646 of 2024 has submitted that he being Executive Officer of the concerned Panchayat, after being satisfying the noting of the file, which came before him, facilitated the payment of sanctioned amount. He also submits that the procedure is that the Board has to select the plan and for the same Executive Engineer and the Junior Engineer are the persons responsible technically and even in the present case there is technical approval by them. Moreover, only contract is floated by the Executive Officer and Chairman, but the technical approval is granted by Executive Engineer and Junior Engineer and thereafter all the work undertaken by the contractor is carried out under the close supervision of Junior Engineer as well as supervision of Sasakt Asthayi Samiti. The physical verification and quality of work is mentioned in the measurement book, duly prepared by the Junior Engineer and approved by the Executive Engineer. With respect to the



subjected scheme, the Junior Engineer had issued the work completion certificate by entering the work done in the measurement book and thereafter payment has been released in favour of the contractor. He also reiterated that the F.I.R. clearly discloses that it is the Junior Engineer, who is mainly responsible for the defalcation in collusion with the contractor.

8. The petitioners in all the aforementioned bail applications made a common submission that during the course of investigation, the investigating officer made spot inspection and found that the RCC drainage and its cover is already placed at site\, which fact has been duly mentioned in para.43 of the case diary. Considering the aforementioned factual position the contractor, who is said to be one of the main accused has been accorded the privilege of anticipatory bail by this Court in Cr. Misc. No. 56212 of 2023 vide order dated 09.11.2023.

9. All the three matters were taken up for consideration on 17.01.2025; the allegation levelled in the F.I.R., revealed that there was no Board meeting and administrative sanction for the work in dispute, nonetheless payment has been made on the basis of measurement book without completion of the work. However, in course of investigation, in paragraph 43 of the case diary, the Investigating



Officer has stated that he found the work in dispute has already been completed.

10. In the aforementioned situation, this Court on 17.01.2025 had directed the Sub-Divisional Officer, Jagdishpur to verify the fact with regard to the completion of the work and file a supplementary counter affidavit in the matter. In compliance with the order of this Court, an affidavit has been filed. It has been apprised to this Court that the Sub-Divisional officer, Jagdishpur, Bhojpur constituted a five men committee on 23.01.2025 to enquire the matter and submit a report. The committee on enquiry submitted its report on 07.02.2025, the copy of which is also forwarded to the Superintendent of Police and District Magistrate, Bhojpur. The report clearly revealed that neither the Plan Board nor any construction was found on the spot and, as such, the committee did not find any evidence regarding the work having been completed.

11. This Court vide order dated 14.02.2025 directed the Superintendent of Police, Ara to seek a show-cause from the Investigating Officer in Jagdishpur P.S. Case No. 555 of 2022 in respect of paragraph 43 of the case diary and its basis, which, *prima facie*, does not appear to be correct in view of the enquiry report submitted by a committee consisting of five men under



Memo No. 160 dated 07.02.2025.

12. In deference to the order of this Court, the Superintendent of Police, Bhojpur directed the SHO, Jagdishpur to submit the case diary of the concerned police station case with a further direction to the Sub-Divisional Police Officer, Jagdishpur to enquire the matter and submit a report. The S.D.P.O., Jagdishpur vide Memo No. 410 dated 19.02.2025 submitted his report with a categorical finding that averment made in para. no. 43 of the case diary is not correct. In the light of the said report, an explanation was sought for from the then S.H.O., Jagdishpur-cum- Investigating Officer and being dissatisfied with the explanation and having found him negligent in the investigation, wrote a letter to the Deputy Inspector General of Police, Shahabad for taking disciplinary action against him.

13. Mr. Satyendra Narayan Singh, learned Additional Public Prosecutor vehemently opposed the bail applications and submitted that the petitioners are *prima facie* found involved in defalcation of Government money and the facts are glaring that without the work having been completed, the accused persons in collusion with each other withdrawn the public money. Moreover, the contractor, namely, Ravi Kumar, who was made



accused in connection with Jagdishpur P.S. Case No. 555 of 2022 has obtained the privilege of anticipatory bail on the basis of the report submitted by the investigating officer to the effect that drainage/sewerage, in question, was found constructed, which statement does not stand corroborated from the report submitted by the five men committee and further by the S.D.P.O., Jagdishpur. All the three petitioners are further found involved in identical nature of defalcation, leading to institution of Jagdishpur P.S. Case No. 230 of 2023, the copy of which is also placed before this Court and kept on record.

14. Before proceeding further, this Court reminds itself that anticipatory bail is a discretionary relief, intended to protect innocent individual from motivated and arbitrary arrest not to provide sanctuary to those, who are, *prima facie*, found indulge in embezzlement of public money meant for the welfare and progress of the downtrodden and/or the citizens of the country; and those who are repeatedly violates the law with impunity.

15. Having heard the learned Advocate for the respective parties and upon perusal of the materials available on record, this Court finds that without there being any Administration sanction of the work, the estimated amount has



been sanctioned and further based upon the completion certificate and the measurement book submitted by the Junior Engineer, the same was duly approved by the Executive Engineer and finally payment was made by the Executive Officer, Nagar Panchayat, Jagdishpur. The factum of release of fund after having completion of the work has been completely denied by the five men committee and the enquiry report submitted by the S.D.P.O., Jagdishpur. The Investigating Officer, who has made statement to the effect of work having been found complete has now been proceeded departmentally and thus from the record it appears that no work under Scheme No. 03/2020-21 has been done.

16. At this juncture, Mr. Amit Shrivastava, learned Senior Advocate, representing the case of the petitioners, submitted that the entire case is based on documentary evidence, which are with the investigating officer or the department; moreover the appearance of the petitioners have never been sought for by the investigating officer for custodial investigation. Reliance has been placed on a decision rendered by the Hon'ble Supreme Court in the Case of **Mahdoom Bava Vs. Central Bureau of Investigation**, reported in, **2023 SCC Online SC 299**.



17. Referring to the decisions rendered by the Hon'ble Supreme Court it is submitted that in the aforementioned case despite the serious allegation levelled against the appellant on being found that the CBI did not require the custodial interrogation of the appellants during the period of investigation till the date of filing of the final report, the Hon'ble Supreme Court found difficult to accept the contention that at this stage the custody of the appellants may be required. The appellants were apprehending arrest, not at the behest of the CBI but at the behest of the Trial Court and thus the appellants were directed to be released on bail.

18. With utmost respect to the mandate of the Hon'ble Supreme Court, this Court is of the opinion that the facts of the case is some what different for the simple reason, as in the case in hand, the investigating officer, prima facie, appears to be in collusion with the accused persons has proceeded with the investigation and reported the work was found complete. However, this fact, on further enquiry, has been found to be incorrect and, as such, this Court is of the opinion that the petitioners Ajay Thakur @ Ajay Kumar Thakur (in Cr. Misc. No. 61854 of 2023) and Vijay Narayan Pathak (in Cr. Misc. No. 10464 of 2024), who were holding the post of Junior Engineer



and the Executive Officer are allegedly involved and primarily responsible for the alleged defalcation. Accordingly, their prayer for bail stand rejected.

19. So far the petitioner, namely, **K.P. Sahu @ Kedar Prasad Sahu** (in Cr. Misc. No. 62321 of 2023) is concerned, this Court having seen his limited role of approval and action taken on the work completion certificate and the measurement book duly submitted by the Junior Engineer, allowed his anticipatory bail.

20. Let the petitioner, namely, **K.P. Sahu @ Kedar Prasad Sahu** (in Cr. Misc. No. 62321 of 2023), in the event of his arrest or surrender before the court below within four weeks from the date of receipt/production of a copy of this order, be released on bail on furnishing bail bonds of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate, Ist Class, Bhojpur at Ara, in connection with Jagdishpur P.S. Case No. 555 of 2022, subject to the condition as laid down under Section 482 (2) of the Bharatiya Nagarik Suraksha Sanhita, 2023 with the further condition that one of the bailors shall be the own/close relative of the petitioner.

21. Before parting with these cases, it would be



pertinent to direct that since the co-accused Ravi Kumar, who had worked as contractor under Scheme No. 03/2020-21 has been granted anticipatory bail by this Court vide order dated 09.11.2023 in Cr. Misc. No. 56212 of 2023 taking note paragraph no. 43 of the case diary, which later on found to be incorrect, direct the State Agency to file application for cancellation of his bail in view of the changed circumstances, as noted hereinabove.

(Harish Kumar, J)

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