IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78213 of 2023

Arising Out of PS. Case No.-151 Year-2016 Thana- VIGILANCE District- Patna

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Rajeev Nayan Kumar Singh, son of Late Balo Mahto, R/O Village - Lohiya Nagar, P.S. - Nagar Thana, District -Begusarai.

... ... Petitioner

Versus

1. The Director Department of Vigilance, Patna Bihar
2. The State of Bihar

... ... Opposite Party

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Appearance :

For the Petitioner	:	Mr.Rajkumar Rajesh, Advocate Mr.Shashank Kumar Singh, Advocate
For the State	:	Mr.Navin Kr.Pandey, APP
For the Vigilance	:	Mr.Rana Vikram Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
C.A.V. JUDGMENT

Date : 17-07-2025

Heard Mr. Rajkumar Rajesh, learned counsel appearing for the petitioner, Mr. Rana Vikram Singh, learned counsel appearing for the Department of Vigilance and Mr. Navin Kumar Pandey, learned A.P.P. for the State.

2. The present application has been preferred under Section 482 of the Code of Criminal Procedure, 1973 (in short, the 'Cr.P.C.'), as to quash the order dated 23.08.2023 passed by learned Special Judge, Vigilance, Patna in connection with Special Case No. 82/2016 arising out of Vigilance P.S. Case No. 151 of 2016, registered for the offence punishable under Section 13(2) read with Section

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13(1)(e) of the Prevention of Corruption Act, 1988, whereby and whereunder learned court has been pleased to reject the discharge petition filed by the petitioner under section 239 of the Cr.P.C.

3. The case of the prosecution speaks briefly that the informant alleged the accused/petitioner, being a Police Inspector at Sonepur Circle, has acquired illegal property beyond the known source of income by misusing his post, for which he was taken for inquiry vide memo no. 73 dated 21.10.2016, being the inquiry officer. It is alleged by the informant that upon initiation of the preliminary inquire, material surfaced indicating the involvement of the accused/ petitioner in the acquisition of the assets disproportionate to their known sources of income. It is stated that the family of the accused/petitioner is living in Flat No. 103, which is situated at Patliputra Villa, Khetan Road, P.S. - Krishnapuri, Patna, which was purchased by the petitioner on 27.08.2011. It has been alleged by the informant that the petitioner has remained posted and discharged official duties in various districts, of Rohtas. The informant has further alleged that the

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petitioner, by misusing his official position and authority, amassed illicit movable and immovable assets in the name of his deceased wife, late Sudha Singh, his present wife, namely, Sangeeta Kumari @ Sangeeta Singh, as wel as other family members. The informant further alleged that the accused/petitioner was appointed on 05.09.1994 as Sub-Inspector of Police, and, thereafter, he has acquired following movable and immovable property, which is as under:

I. Rajiv Nayan Kumar Singh Estimated Income from salary – 60,00,000/-

II. a. Non-Estimated expenses 1/3rd of salary of Rajiv Nayan Kumar Singh – 20,00,000/-

II. b. Children education – 5,00,000/- (Approx.)

III. Approximate saving		
Income	Expenses	Saving
60,00,000/-	25,00,000/-	35,00,000/-
Hence, total saving is 35,00,000/-		

IV. Details of assets of immoveable property of Rajiv Nayan Kumar Singh

Details of assets	**Purchase date**	**Price**	**In the name of**
a. Deed No. 22127 Flat No. 103, Patliputra villa, P.S. - Krishnapuri,	**27.08.2011**	**Rs. 38,89,804/-**	**Rajiv Nayan Singh**

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Patna.			
b. Tauji No. 10372, P.S. 220, Khata, No. 68, Khesra – 504, 505, 506, 507, 539, 540, 541, Area 10 Khatha, Begusarai.	**10.01.2013**	**Rs.13,99,795/-**	**Wife of Rajiv Nayan (Sangeeta Kumari)**
c. Tauji No. 10372, P.S. No. 220, Khata No. 68, Khesra – 504, 505, 507, 539, 540, 541, Area 4 Khatha 9 Dhur.	**24.05.2013**	**Rs.4,81,795/-**	**Wife of Rajiv Nayan (Sangeeta Kumari)**
d. Tauji No. 809, 810, 927, 972, 6766, P.S. No. 477, Rakba 109 dismil	**01.09.2015**	**Rs. 55,06,100/-**	**Wife of Rajiv Nayan (Sangeeta Kumari).**

V. The details of acquired movable property of Rajiv Nayan Singh (petitioner) is given below:

a. Deposit in SBI in the name of R.N. Singh as declaration of assets and liability 2014-15, Price – Rs. 4,50,000/-

b. Deposit in NSC in the name of Rajiv Kumar Singh as declaration of assets and liability 2014-15, Price – Rs. 40,000/-

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c. Deposit in LIC in the name of R.N. Singh as declaration of assets and liability 2014-15, Price – Rs. 27,000 x 4 = 108,000/-

Gold ornament as declaration of Assets and liability – 2014-15, Price – Rs. 6,00,000/-

Total amount – Rs. 11,98,000/-

5. The informant further alleged that as per his enquiry, Rajiv Nayan Kumar Singh, since his appointment on 05.09.1994, till date, acquired the entire property for a tune of Rs. 1,16,77,494/- + Moveable property Rs. 11,98,000/- = **Rs. 1,28,75,494/- (Total).** The informant alleged that the petitioner, having savings of Rs. 35,00,000/-, acquired property worth Rs. 1,28,75,494/-, hence Rs. 1,28,75,494 – 35,00,000 = **Rs. 93,75,494/-** comes as disproportionate assets**.** As per the preliminary enquiry report, the petitioner has acquired the property for a sum of **Rs. 93,75,494/-,** which is beyond the source of income of the petitioner; therefore, the present case has been instituted under section 13(2) read with 1391)(e) of the P.C. Act against the petitioner.

6. It is submitted by learned counsel appearing on behalf of the petitioner that admittedly the present FIR was

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lodged in a hurry, which is evident from the fact that the investigating agency, by accepting its mistake, removed these properties from the list except at serial no. 1, suggesting that the FIR was lodged out of ulterior and oblique motive with a harassing attitude. It is submitted by learned counsel that the FIR does not disclose the offence and there is a bleak chance of conviction; therefore, the same is liable to be quashed. In support of his submission, reference was made to the judgment of Hon'ble Supreme Court as available through **Madharao Jiwajirao Scindia vs. Shambhajirao Chandrojirao Angre** reported in **(1988) 1 SCC 962.**

7. It is pointed out that earlier the petitioner also filed a criminal writ bearing Cr.W.J.C. No. 2501/2017 to quash the FIR, but in the meantime, as the charge-sheet was submitted and the stage has been changed, the same was withdrawn to raise all such issues at the time of framing of charge.

8. Learned counsel further submitted that without proper preliminary enquiry, or without calling any show cause to the petitioner as to ascertain the preliminary veracity of the

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allegation, the present FIR was lodged. It is submitted that the petitioner was granted bail by the learned court below when actual property holders came forward and stated that the property of the petitioner, in actuality, belongs to him, but ignoring the aforesaid fact, the learned CJM took cognizance against the petitioner.

9. It is pointed out by learned counsel that the property at serial no. 1 of the FIR is the Flat that was purchased by the petitioner by taking a loan granted by the State Bank of India, Krishnapuri, for which Home Loan A/c No. 31875694140 was opened and E.M.I. of Rs. 15,213/- was deducted. The flat is still under loan, and, therefore, the same cannot be said of the property of the petitioner till the final deposition of the loan or EMI. It is pointed out that the investigating agency has assessed the cost of the flat as Rs. 28,08,804/- by way of deduction of Rs. 10,81,000/- from property at sl. no. 1 of the FIR, which was obtained on loan by the petitioner. It is pointed out that from perusal of charge-sheet, it is apparent that the respondent has declared his source of income as Rs. 73,32,712/-.

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10. Learned counsel further submitted that from perusal of the charge-sheet, it transpires that the allegation of Rs. 19,98,742/- is based on an erroneous and wrongful finding, where the EMI of the loan amount of Rs. 14,93,005/- was calculated as an expense, and by way of imagination , the further reflected amount of Rs. 5,47,320/- was in the form of inventory of articles, which has not been seized or recovered. It is a case of double calculation, which is not permissible in view of the legal report of Hon'ble Supreme Court as available through **Kanchan Kumar Vs. State of Bihar** reported in **2022 Live Law (SC) 763.** Reference was made heavily on paragraphs 16.3 and 16.4 of the judgment.

11. While concluding the argument, it is submitted that in view of the **Kanchan Kumar case (supra),** the rejection of the discharge petition dated 23.08.2023 appears bad in the eyes of the law, and, therefore, the same is liable to be set-aside/ quashed.

12. It is pointed out that repayment of EMI calculated in the expense head, which is not as per law, and, therefore, if the same be taken into consideration, no *prima-*

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facie case is made out against the petitioner.

13. In view of the aforesaid submission, Mr. Rana Vikram Singh, learned counsel appearing on behalf of the Department of Vigilance, submitted that the core issue is to decide whether the calculation of EMI as expenditure was made wrongly or not in view of the **Kanchan Kumar case (supra).** In support of his submission, it is submitted that the enquiry *prima facie* disclosed the evidence of commission of the offence regarding amassing disproportionate assets to the tune of Rs. 93,75,984/- during the check period by the petitioner. Upon investigation, the lawful income of the petitioner/accused during the check period from 05.09.1994 to 27.12.2016 was Rs. 73,32,712/-, whereas the total assets and expenditure amounting to Rs. 93,31,454/-. Thus, the assets disproportionate to the known sources of income stood at Rs. 19,98,742/-.

14. It is submitted that the contention of learned counsel appearing for the petitioner that repayment of the housing loan cannot be treated as a separate expenditure, if it has already been deducted from the salary. Admittedly, this

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position of the law was established through the **Kanchan Kumar case (supra),** however, the facts and financial statement in the present case are altogether different and, therefore, clearly distinguishable from the facts of the **Kanchan Kumar case (supra).**

15. Clarifying further, Mr. Singh submitted that in the **Kanchan Kumar case (supra),** the Hon'ble Supreme Court held that "*the amount repaid towards loan installments had already been deducted from the appellant's gross salary, and the deducted figure was treated as the total disposable income available to the appellant during the check period.*"

16. In the **Kanchan Kumar case (supra),** EMIs were deducted at the source by the employer from the gross salary of the accused and only the net salary was credited to his account, therefore, the amount used for loan repayment could not be again shown as an independent expenditure, as it has already been excluded from the total income, but, in the present case, the petitioner received his salary without deduction, as specifically recorded in paras 120 to 123 of the case diary.

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17. It is pointed out by Mr. Singh that the I.O. has obtained the salary statement of the petitioner from his department, on the basis of which he found that the petitioner has received a total sum of Rs. 57,80,792/- as salary income. It is pointed out that the petitioner availed the housing loan from the State Bank of India, and for this purpose, a separate loan account was opened. The EMI towards the housing loan was not deducted at source by the employer. Upon perusal of the bank statement, annexed by the petitioner, it transpires that the petitioner himself has acknowledged the transfer of funds from other accounts, into the loan account, from which the funds were subsequently deducted. It is pointed out that the bank entries dated 01.01.2013 and 24.01.2014 further strengthen the prosecution's contention, as it shows that Rs. 2,00,000/- and Rs. 1,70,000/-, total of Rs. 3,70,000/-, were transferred from the salary A/c No. 11174630341 to the petitioner's loan account No. 31875694140. These transactions clearly demonstrates that the EMI repayments were not made directly by the salary deduction at source but were effected through fund transfers, followed by the

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repayment. Thus, the contention of petitioner as charge-sheet reflects double counting of the loan repayment is misconceived and unsupported.

18. While concluding the argument, it is submitted that in view of the aforesaid submission as raised by learned counsel appearing for the petitioner is completely unfounded and moreover, charges has already been framed in this case and the matter enters into the trial, which may conclude at its earliest in accordance with law.

19. It would be apposite to reproduce the impugned order which reads as under:

"Court of Special Judge, Vigilance, Patna.
Special Case No.02/2016
(Arising out of Vigilance. P.S. Case No.151/2016)

23.8.2023 Today is the date fixed in this case for orders on the discharge petition dated 19.4.2023 and supplementary petition dated 19.8.2023 filed on behalf of the accused Rajeev Nayan Kumar Singh S/o. Late Balo Mahto. Present case arises out of Vigilance P.S. Case No. 151/2016 registered for the offence punishable U/s.13(2) r/w.13(1)(e) of the P.C Act 1988. I have already heard the learned counsel for the petitioner as well as the learned Spl.P.P for the state on the previous date.

While pressing the petition under order it was submitted on behalf of the petitioner that from perusal of F.I.R the properties have been mentioned under the heading of Sl.No.1 to 4, but the property no. 2, 3 and 4 does not belong to the petitioner, rather the same is

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the property of Rajeev Kumar and due to similarity of name the confusion occurred. The petitioner stated this fact before the 1.0 under affidavit and the same was accepted by the investigating agency. He further submitted that so far property no.1 which is a flat and was purchased by the petitioner after fetching loan from the bank and he is still paying the E.M.I for the same. So the allegation as leveled against the petitioner in the FIR is not bonafide mistake. As such no case is made out against the petitioner and the proceeding is liable to be dropped against the petitioner. He further submitted that during investigation no any other property besides the declared property has been found belonging to the petitioner. On these grounds as well as on the grounds as mentioned in the petitioner prayer has been made to discharge the petitioner accused from this case.

On the other hand the learned Spl.P.P has opposed the prayer of the petitioner accused.

Having heard the rival submissions of respective sides perused the case record as well as the other materials available on the case record.

On the perusal of the case record it is apparent that the FIR in this case initially registered for the offence punishable u/s 13(b) r/w 13(1)(e) against the petitioner accused for allegedly amassing properties worth Rs. 93,73,494/-. After conclusion of the investigation 1.0 submitted the charge-sheet against the petitioner accused giving a finding that a case of disproportionate asset wroth Rs. 19,58,742/- was found to be true.

As such I find that there is primafacie evidence and materials available on the case record to frame charge against the accused in this case. In a number of decisions of the Hon'ble High Court as well as the Hon'ble Supreme Court of India have held that charge can be framed even on the basis of strong suspicion. While dealing with the discharge petition the court has not to examine the evidence and materials available on the record meticulously.

Considering the facts and circumstances discussed

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above I am not inclined to discharge the petitioner accused in this case. Accordingly, the discharge petitioner stands rejected. Put up on 23.11.23 for charge.

Sd/-
Special Judge, Vigilance,
Patna"

20. It would be apposite to reproduce paras 16.3 & 16.4 of the **Kanchan Kumar case (supra),** on the sole basis of which the aforementioned impugned order was challenged showing that the EMI paid by the petitioner was calculated twice showing as expenditure, the same reads as under:

"**16.3.** The second objection relates to the inclusion of an amount of Rs 53,467 as expenditure towards repayment of the loan from BSFC. However, the amount repaid towards loan instalments was already deducted from the appellant's gross salary, and the deducted figure was recorded as the total disposable income with the appellant during the check period. Hence, the loan repayment cannot be separately counted as an expenditure yet again. This is a glaring mistake. The Special Judge (Vigilance) as well as the High Court did not consider this objection on the ground that a roving inquiry is not permissible at the stage of discharge.

16.4. The third objection relates to the inclusion of Rs 1,58,562 as the value of the articles found during a search conducted in the appellant's house on 21-2-2000, twelve years after the check period of 1974 to 1988. There is nothing to indicate, even prima facie, that these articles found during the search in the year 2000 were acquired during the check period. In the absence of any material to link these articles as having been acquired during the check period, it is impermissible to include their value in the expenditure. We are therefore of the opinion that the appellant's objection about inclusion of this amount in the list of expenditure is fully justified. Unfortunately, even this

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objection, which did not require much scrutiny of the material on record, was not considered by the Special Judge (Vigilance) or the High Court."

21. It would further be apposite to reproduce para 21 of **Sajjan Kumar Vs. Central Bureau of Investigation** reported in **(2010) 9 SCC 368** and para 23 of **Dipakbhai Jagdishchandra Patel Vs. State of Gurarat** reported in **(2019) 16 SCC 547,** which read as under:

> "**21.** On consideration of the authorities about the scope of Sections 227 and 228 of the Code, the following principles emerge:
> (v) At the time of framing of the charges, the probative value of the material on record cannot be gone into but before framing a charge the court must apply its judicial mind on the material placed on record and must be satisfied that the commission of offence by the accused was possible.
> (vi) At the stage of Sections 227 and 228, thecourt is required to evaluate the material and documents on record with a view to find out if the facts emerging therefrom taken at their face value disclose the existence of all the ingredients constituting the alleged offence. For this limited purpose, sift the evidence as it cannot be expected even at that initial stage to accept all that the prosecution states as gospel truth even if it is opposed to common sense or the broad probabilities of the case..."

In Dipakbhai Jagdishchandra Patel case:

> "**23.** At the stage of framing the charge in accordance with the principles which have been laid down by this Court, what the court is expected to do is, it does not act as a mere post office The court must indeed sift the material before it. The material to be sifted would be the

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> material which is produced and relied upon by the prosecution. The sifting is not to be meticulous in the sense the court dons the mantle of the trial Judge hearing arguments after the entire evidence has been adduced after a full-fledged trial and the question is not whether the prosecution has made out the case for the conviction of the accused All that is required is, the court must be satisfied that with the materials available, a case is made out for the accused to stand trial. A strong suspicion suffices However, a strong suspicion must be founded on some material. The material must be such as can be translated into evidence at the stage of trial. The strong suspicion cannot be the pure subjective satisfaction based on the moral notions of the Judge that here is a case where it is possible that the accused has committed the offence. Strong suspicion must be the suspicion which is premised on some material which commends itself to the court as sufficient to entertain the prima facie view that the accused has committed the offence."

22. From the aforesaid factual and legal discussion, it is clear that the probative value of the materials on record cannot be gone into at the time of framing of charges, but court must apply its judicial mind to the materials available on the record for its satisfaction whether commission of offence by the accused was possible or not.

23. Coming to the present factual scenario, it is an admitted position that the loan/EMI was not deducted at source and gross salary was paid to the petitioner, which also transpires from the second supplementary counter affidavit of

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the State dated 13.06.2025. The petitioner opened a separate loan account to which the amount was transferred from his salary account, from where the EMI was deducted. These factual aspects distinguish the case of the petitioner to that of the ratio, as settled through the **Kanchan Kumar case (supra),** as discussed aforesaid. Rest of the argument as raised by the petitioner is appearing *prima facie* raised in his defence, which can only be looked into during the trial.

24. Considering the aforesaid aspect, it transpires that the present petition is devoid of any merit, accordingly, the same stands dismissed.

25. Let a copy of this judgment be sent to the learned trial court forthwith.

(Chandra Shekhar Jha, J.)

Rajeev/-

AFR/NAFR	**AFR**
CAV DATE	**07.07.2025**
Uploading Date	**17.07.2025**
Transmission Date	**17.07.2025**

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