

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9800 of 2026

Arising Out of PS. Case No.-1 Year-2025 Thana- VIGILANCE District- Patna

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Akhilesh Kumar, S/o Late Baso Choudhary, Resident of - H. No. 484, New Mainpura, Kharanja Road, Jai Mata Di STD Danapur, P.S. - Danapur, District - Patna.

... .. Petitioner/s

Versus

The State of Bihar through S.P Vigilance, Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ravi Bhardwaj, Adv.

Mr. Nilabh Ranjan, Adv.

For the Vigilance : Mr. Arvind Kumar, Spl. P.P.

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CORAM: HONOURABLE MR. JUSTICE SOURENDRA PANDEY

ORAL JUDGMENT

Date : 18-02-2026

Heard the learned counsel appearing on behalf of the parties.

2. This is an application seeking quashing of the order dated 16.01.2026 passed by the Court of learned Special Judge, Vigilance, Patna in connection with Special Case No. 02 of 2025, arising out of Vigilance P.S. Case No. 01 of 2025, registered from the offence under Section 7(a) of the Prevention



of Corruption Act, whereby the discharge application of the petitioner has been rejected.

3. The present case arises out of an FIR lodged against the petitioner for illegally accepting bribe while being authorized to be a witness on gate-pass for lifting of iron scrap materials on behalf of the South Bihar Power Distribution Company Ltd (*in short the SBPDCL*). It is the prosecution story that a total demand of Rs. 90,000/- was made as bribe, failing which, the complainants, being purchasers, would be blacklisted and face trouble. The allegation was verified by the members of the Vigilance and they accordingly set-up a pre-trap for a particular day, to be recorded by another member. Upon being searched, the petitioner, on 07.01.2025, was found with a cash of Rs. 30,000/-, which was planned by the Vigilance as well as recorded in a form of video by one of the members. On the same day, post-trap *memorandum* was prepared, cash which was recovered from the right side pocket worn by the petitioner, duly verified by two independent witnesses that tallied the number mentioned in pre-trap *memorandum*. Thereafter, the arrest *memo* was prepared, in which, hands and the pocket of the pant of the petitioner were washed in different glasses from chemicals which turned pink as well as audio recorder and



memory card, all were marked as Exhibits-A to G respectively.

4. It has been submitted on behalf of the petitioner that the entire story of the prosecution is false and there is no material to show that there was any occasion for the petitioner to receive the amount so alleged. It has further been submitted that the prosecution story has crucial omissions regarding unexplained delay in date of filing of the complaint and the date of incident. It has been submitted that there is nothing on record which proves the capacity under which the complainants lodged the present complaint. It has next been submitted that the SBPDCL constituted a Committee, comprising five persons, authorized to oversee lifting of scrap and no occasion was found for the petitioner to have demanded bribe or even if the allegation that he was creating hurdle is accepted, then it is unexplained as to how he alone would have obstructed the part by not putting signature, as it was not mandatory. It has also been submitted that the allegation of threat of blacklisting the complainants, attributed to the petitioner, is beyond the authority of the petitioner and, hence, a super imposition.

5. The learned counsel for the petitioner submits that there was foul play between the complainants and the authority for lifting scraps and the cost of the same to be paid,



which was a threat to them, as the petitioner would have known about it, hence the allegation was fabricated against him. It has been submitted that no evidence shows refusal of signing by the petitioner on the said gate-pass, that could impact towards lifting of said scraps nor there is any statement of the drivers of the vehicles or detail of the vehicles, so trapped. It has lastly been submitted that the voice recording is not scientifically examined nor actual footage of CCTV was recovered from the site of incident neither the evidence was proved to be untampered nor the credibility of the witnesses are reliable.

6. The learned counsel for the petitioner has, thus, submitted that there is no illegality in the order impugned in the present application and, accordingly, the present application preferred by the petitioner is fit to be dismissed.

7. The learned Special Public Prosecutor appearing on behalf of the Vigilance, while opposing the application of the petitioner, has submitted that there was sufficient material found against him and, thereafter, the *charge-sheet* has been filed, whereupon the cognizance was taken and subsequently, the discharge application filed by the petitioner was rejected.

8. Referring to the post and pre trap *memorandum*,



the learned Special Public Prosecutor has submitted that a raiding team was constituted and after following all the requirements under the law, the currency notes were applied with phenolphthalein powder mixed with sodium carbonate and, thereafter, in a well-laid trap, the petitioner was apprehended accepting Rs. 30,000/- as bribe. It has been submitted that there is no illegality in the conduct of the raid and the procedures as laid down was followed.

9. The learned Special Public Prosecutor, while referring to the audio scripts of the conversation between the accused/petitioner and other persons, submits that there is enough evidence to show that the conversation with regard to demand and payment of money was being made and, therefore, at this stage, discharging the petitioner would not be proper and the defence of the petitioner cannot be taken into account at the present stage. It has further been submitted that the defence adopted by the petitioner to have never demanded or accepted any bribe from the complainants in connection with the lifting of the iron scrap materials, is only a defence and merely because no work was pending with him while he was apprehended along with the currency notes, cannot be a ground for discharge.

10. It has next been submitted by the counsel for



the Vigilance that the defence being taken by the petitioner of the fact that a Committee, consisting of five different persons, to oversee the lifting of scrap materials was constituted and, therefore, the role of the petitioner was marginalized, cannot, in any possibility, be considered at the present stage as this is only his defence and in view of petitioner being caught red-handed with the said amount, the acceptance of bribe cannot be ruled out at the present stage and the same can only be seen during the trial.

11. Upon hearing the learned counsel appearing on behalf of the respective parties and on going through the pleadings available on record, one thing is very much clear that the case of the Department of Vigilance was that a pre-trap *memorandum* was prepared and, accordingly, a trap was laid and the petitioner was caught red-handed with Rs. 30,000/- and, thereupon, the present case was lodged. It is also evident from the FIR that there was certain work for which the petitioner is said to have made certain demands and on account of such complaint made by the complainants, namely, Pramod Kumar and Akhilesh Kumar Choudhary, the trap was laid. This Court has also observed that the A.S.I. of the Vigilance Investigation Bureau has also verified such allegations and, thereafter, the



pre-trap *memorandum* was prepared and the trap was laid.

12. From the perusal of the post-trap *memorandum*, this Court does not find any irregularity as far as the procedures are concerned and the entire trap was also video-graphed and the same forms part of the evidence against the petitioner. From the post-trap *memorandum*, it is also evident that the amount was recovered from the pocket of the pant of the petitioner and, thereafter, he was apprehended on the spot.

13. The contentions raised by the learned counsel for the petitioner that there was no occasion for him to make such demand and he was one of the members of the Committee among five and, therefore, he could not have, in all possibility, being instrumental in taking the money alone to do the work of the complainants, does not seem reasonable as it is yet to be deciphered whether the said amount was being accepted by the petitioner for his own purpose or the same was meant for others.

14. The arguments raised on behalf of the petitioner are more in the nature of defence and, therefore, as per the provisions of Section 227 of the Code of Criminal Procedure, 1973, the versions of the petitioner, which are all matters of defence, could not be looked into while considering the petition for discharge.



15. It is a settled law that while deciding a discharge petition, the evidences brought on record by the prosecution, both in the form of documents or oral statements, are to be considered and an accused is only entitled to be discharged if the evidence which the prosecution has proposed to be adduced during the trial to prove the guilt of the accused, even if fully accepted, cannot, in all possibility, go on to show that the accused has committed such offence.

16. This Court is conscious of the fact that the accused has a right to explain the materials giving rise to the suspicion and the evidence which has been brought against him, but his submissions has to be confined to the materials brought by the prosecution and no plea of his by way of defence can be looked into at the stage of discharge.

17. The learned counsel for the petitioner, in support of his contention, has placed reliance upon a judgment rendered in the case of *M.E. Shivalingamurthy Vs. Central Bureau of Investigation*, reported in (2020) 2 SCC 768, wherein the Hon'ble Supreme Court, with respect to the legal principles applicable with regard to an application seeking discharge, has observed in paragraph 17 as follows:

Legal principles applicable in regard



to an application seeking discharge

“17. This is an area covered by a large body of case law. We refer to a recent judgment which has referred to the earlier decisions viz. P. Vijayan Vs. State of Kerala : (2020) 2 SCC 398/ (2010) 1 SCC (Cri) 1488 and discern the following principles:

17.1. If two view are possible and one of them gives rise to suspicion only as distinguished from grave suspicion, the trial Judge would be empowered to discharge the accused.

17.2. The trial Judge is not a mere post office to frame the charge at the instance of the prosecution.

17.3. The Judge has merely to sift the evidence in order to find out whether or not there is sufficient ground for proceeding. Evidence would consist of the statements recorded by the police or the documents produced before the Court.

17.4. If the evidence, which the Prosecutor proposes to adduce to prove the guilt of the accused, even if fully accepted before it is challenged in cross-examination or rebutted by the defence evidence, if any, “cannot show that the accused committed offence, then, there will be no sufficient ground for proceeding with the trial”.

17.5. It is open to the accused to explain away the materials giving rise to the grave suspicion.



17.6. The court has to consider the broad probabilities, the total effect of the evidence and the documents produced before the court, any basis infirmities appearing in the case and so on. This, however, would not entitle the court to make a roving inquiry into the pros and cons.

17.7. At the time of framing of the charges, the probative value of the material on record cannot be gone into, and the material brought on record by the prosecution, has to be accepted as true.

17.8. There must exist some materials for entertaining the strong suspicion which can form the basis for drawing up a charge and refusing to discharge the accused.”

18. The aforesaid judgment does not come to the rescue of the petitioner as the Court had very categorically stated that at the time of framing of charge, the probative value of the material on record cannot be gone into and the material brought on record by the prosecution has to be accepted as true.

19. In fact, the Hon’ble Supreme Court in paragraph 18 of the judgment, referred to above, has clarified as under:

“18. The defence of the accused is not to be looked into at the stage when the accused seeks to be discharged under Section 227 CrPC (see State of J & K Vs. Sudershan



Chakkar : (1995) 4 SCC 181/1995 SCC (Cri) 664/AIR 1995 SC 1954). The expression, “record of the case”, used in Section 227 CrPC, is to be understood as the documents and the articles, if any, produced by the prosecution. The Code does not give any right to the accused to produce any document at the stage of framing of the charge. At the stage of framing of the charge, the submission of the accused is to be confined to the material produced by the police (see State of Orissa Vs. Debendra Nath Padhi : (2005) 1 SCC 568/ 2005 SCC (Cri) 415/AIR 2005 SC 359).”

20. In view of such categorical observation by the Hon’ble Supreme Court that the defence of the accused cannot be looked into at the stage of discharge as it is evident from the pleadings of the petitioner that he has tried to make out a defence against the allegations levelled against him and denying the very trap, would amount to coming out with his defence, which the learned Trial Court was not competent to consider at the time of discharge.

21. Reliance has also been placed upon a decision of the Hon’ble Supreme Court in the case of **Kanchan Kumar Vs. State of Bihar**, reported in **(2022) 9 SCC 577**.

22. Thus, in view of the aforesaid discussions, it is evident that the petitioner is relying more on defence rather than



pointing out any irregularity in the trap and the materials which have been brought against him. The materials available on record *prima facie* discloses commission of offence under P.C. Act warranting trial and no ground is made out to invoke the inherent powers under Section 482 Cr.P.C.

23. This Court, therefore, does not find any illegality in the impugned order dated 16.01.2026, referred to above.

24. Accordingly, the application stands dismissed.

25. Interlocutory application(s), if any, also stands disposed off.

(Sourendra Pandey, J)

Praveen-II/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.02.2026
Transmission Date	18.02.2026

