

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17235 of 2026

Arising Out of PS. Case No.-9 Year-2001 Thana- VIGILANCE District- Patna

Prabhakar Tiwari S/o Harkishore Tiwari Resident of - Ganiyari Gass Factory
Road, Singhrouli, P.S -Waidhan, District - Singhrouli, State- M.P.

... .. Petitioner

Versus

The State of Bihar through Vigilance Investigation Bureau Bihar

... .. Opposite Party

Appearance :

For the Petitioner : Mr. Ashhar Mustafa, Advocate

For the Opposite Party : Mr. Arvind Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE PRAVEEN KUMAR
CAV ORDER

4 12-05-2026 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of Vigilance Investigation Bureau.

2. By filing this application, the petitioner has prayed for setting aside order dated 26.03.2025 passed by the learned Special Judge, Vigilance, Patna, directing issuance of process under Section 82 and 83 of Cr.P.C. against the petitioner in connection with Special Case No. 09A of 2001, arising out of Vigilance P.S. Case No. 09 of 2001, dated 16.06.2001, registered for the offences punishable under Sections 109, 120B, 201, 409, 420, 467, 468, 471, 477A of the Indian Penal Code and Section 13(2) read with Section 13(1)(d) Prevention of Corruption Act 1988.

3. The case of the prosecution, in brief, is that the then SHO, Vigilance Police Station, Patna, received a communication from the Under-Secretary, Cabinet Vigilance



Department, Bihar, Patna, contained in Letter No. 47/93-1248, dated 09.04.2001, enclosing therewith the enquiry report of the Technical Examination Cell, Cabinet Vigilance Department, Bihar, Patna, along with the noting of the concerned Engineer-in-Chief and the decision of the Government to the effect that in the construction of road from Ojhwalia More to Agiaon market situated within Piro block, which was got executed by Rural Engineering Organization, Bhojpur, misappropriation by the concerned public servants by drawing exaggerated estimate of the work in question had surfaced as also the work was not carried out as per the specifications. It was, thus, alleged that concerned public servants, abusing their official position, indulged in conspiracy and misappropriated several lakhs of government money.

4. As per direction, on the basis of the documents made available to him, the informant carried out preliminary inquiry on all the issues and found that there is *prima facie* material indicating culpability, warranting prosecution of concerned public servants for indulging in offences of cheating, forgery as also under Prevention of Corruption Act, 1988 by abusing their official position.

5. On analysis of the materials made available to the



informant, he found *prima facie* material against (1) Om Prakash Prasad, Executive Engineer, (ii) Vinod Kumar. Assistant Engineer and (iii) Kamla Prasad, Junior Engineer of Rural Engineering Organization, Ara, u/under Sections 109, 120B, 201, 409, 420, 467, 468, 471, 477(A) of the Indian Penal Code and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act 1988.

6. It is further alleged that on the recommendation of the Additional Director General, Vigilance Investigation Bureau, Bihar, Patna, formal FIR came to be registered against the above named and unnamed accused persons under Sections 109, 120B, 201, 409, 420, 467, 468, 471, 477(A) IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act 1988, giving rise to Vigilance P.S. Case No. 09 of 2001, and the copy of letter dated 09.04.2001, forwarded by Cabinet Vigilance Department with enclosures was duly appended with the FIR.

7. Learned counsel for the petitioner has submitted that the petitioner is one of the contractors of the said project and has not committed the alleged offence. He has falsely been implicated in this case even though he has carried out the part of the works allocated to him in accordance with the work order



complying with the prescribed specification. He has further been submitted that surprisingly, the informant himself had taken over the charge of the investigation as Investigating Officer.

8. It has further been submitted that since one of the FIR named accused, namely, Kamla Prasad, Junior Engineer, REO, died on 16.05.2007, during the course of investigation, charge-sheet was submitted vide CS No. 246 of 2007, dated 20.11.2007, under Sections 109, 120B, 201, 409, 420, 467, 468, 471, 477(A) IPC and Section 13(2) read with 13(1)(d) of the Prevention of Corruption Act, 1988, against the remaining two FIR named accused persons as also against six named contractors including the petitioner. On submission of charge-sheet, cognizance was taken by the learned Special Judge Vigilance I, Patna, against all the eight charge-sheeted accused persons vide order dated 04.12.2007 for the offences punishable under Sections 109, 120B, 201, 409, 467, 468, 471, 477A IPC. Cognizance was also taken under Section 13(2) read with 13(1)(d) of Prevention of Corruption Act, but that was taken only against such accused persons including the petitioner, who were not public servants. It was indicated in the said order that so far as public servants are concerned, cognizance of offences under



Prevention of Corruption Act, 1988 shall be taken against them only after receipt of sanction order in the case. By the same order, proceeding against accused Kamla Prasad was dropped as he died during the court of investigation and the office was also directed to issue non-bailable warrant of arrest against all the accused persons including the petitioner. It has also been submitted that from perusal of the order-sheet of the trial court, it would appear that the case of the petitioner was separated by order dated 12.04.2016. The learned court below has, without adhering to the procedure prescribed and waiting for the service report of the non-bailable warrant of arrest, by order dated 26.03.2025, directed for issuance of non-bailable warrant and the processes under Sections 82 and 83 CrPC simultaneously, which is unsustainable and requires to be interfered by this Court by setting aside the same.

9. Learned counsel for the Vigilance Investigation Bureau, on the other hand, vehemently opposed the prayer of the petitioner and submitted that there is no infirmity in the order impugned warranting interference of this Court and the application is fit to be dismissed.

10. Heard learned counsel for the parties and perused the record.



11. On perusal of the record and the order-sheet, it transpires that no service report of warrant of arrest (non-bailable) was received, which has been recorded in various order-sheets of the learned trial court. The case of the petitioner was separated by order dated 12.04.2016 and suddenly by order dated 26.03.2025, the learned trial court directed for issuance of non-bailable warrant of arrest and the processes under Sections 82 and 83 CrPC simultaneously. The learned trial court, as transpires from perusal the order-sheets, was itself waiting the service report of non-bailable warrant of arrest and without satisfying itself with the service report, suddenly issued non-bailable warrant of arrest and the processes under Sections 82 and 83 CrPC simultaneously.

12. It is important to mention that Section 82 and 83 CrPC processes can be issued only after taking recourse to the proviso to Section 83 CrPC, which reads as follows: -

“Provided that where at the time of the issue of the proclamation the Court is satisfied, by affidavit or otherwise, that the person in relation to whom the proclamation is to be issued, -

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole



or any part of his property from the local jurisdiction of the Court,
it may order the attachment simultaneously with the issue of the proclamation.”

13. In view of the facts and circumstances aforementioned, this Court comes to a finding that the procedure, as prescribed under proviso to Section 83 CrPC, has not been followed by the learned trial court.

14. Taking into account the entire facts and circumstances and the totality of the case, this Court has no option, but to quash the order dated order dated 26.03.2025 passed by the learned Special Judge, Vigilance, Patna, directing issuance of process under Sections 82 and 83 of Cr.P.C. against the petitioner in connection with Special Case No. 09A of 2001, arising out of Vigilance P.S. Case No. 09 of 2001. Accordingly, the impugned order dated 26.03.2025 is quashed.

15. This application is allowed.

(Praveen Kumar, J)

Pawan/-

AFR/NAFR	NAFR
CAV DATE	27.04.2026
Uploading Date	12.05.2026.
Transmission Date	12.05.2026.

