

(2017) 02 JH CK 0158
In the Jharkhand High Court
Case No : 1465 of 2016

Gopal Chandra Rai, & Ors.,

APPELLANT

Vs

The State of Jharkhand, & Ors.,

RESPONDENT

Date of Decision : 28-02-2017

Acts Referred:

[Indian Penal Code, 1860](#), [Section 420](#),
[Section 468](#), [Section 471](#), [Section 467](#), [Section 409](#), [Section 34](#)

Citation : (2017) 02 JH CK 0158

Hon'ble Judges : Anant Bijay Singh

Bench : SINGLE BENCH

Advocate : Amit Kumar, Ashok Kumar Singh

Judgement

1. Since, both the Anticipatory Bail Applications arose from same FIR, they are being heard together and disposed of by this common order.
2. Heard learned counsel for the petitioners, learned counsel for the informant and the learned Addl.P.P.
3. Both the petitioners are apprehending their arrest in connection with Bistupur P.S.Case no.054 of 2016, corresponding to G.R.No.565 of 2016 registered under sections 406, 420, 409, 467, 471, 468 and 34 I.P.C lodged on the basis of written report given by S.C. Dash, Registrar, Kolhan Univerisity, Chaibasa dated 08.02.2016.
4. In A.B.A.No. 1465 of 2016, the informant-Dr.S.C.Dash, Registrar, Kolhan University, Chaibasa has alleged that petitioner has defalcated the college funds, manufacturing of forged documents, criminal breach of trust, criminal conspiracy and other criminal offences against Dr. R.K.Das and other employees of Jamshedpur Co-operative College, Jamshedpur.
5. It is alleged that under the orders of the Vice-Chancellor, Kolhan University, an

enquiry was conducted and the enquiry

report dated 08.06.2015 reveals that huge financial irregularities/ defalcation of college funds done by Dr. R.K.Das, the then Principal of the college. Thereafter, show-cause was issued and charges were framed against Dr. R.K.Das, Ex-Principal, Sri Lukru Kachchap (Bursar), Sri Shankar Rajak (Accountant), Kula Kant Jha (retired employee) and others. Being the retired employee, charges were not framed against Sri Kula Kant Jha

6. It is further alleged in lieu with the enquiry report as also the charges framed against the accused persons, the Kolhan University had constituted a Three Members Committee vide Office Order No.KU/R/290/15 dated 11.03.2015 for enquiry against the financial receipt and payments of Jamshedpur Co-operative College for the last five years.

7. The report of the Three Members Committee, which is annexed with the bail application reveals that the Committee visited the Jamshedpur Co-operative College on 18.05.2015 and 19.05.2015 and it further reveals that an amount of Rs. 31,97,142/- was paid against daily wages payment for cleaning of college, forest clearance and other works between December, 2013 to February, 2015. It has been gathered that huge payments have been made in the name of forest clearance, cleaning of college campus and other works, a detailed chart has also been annexed with the report. The aforesaid charge reveals that payment by making daily wages vouchers in the name of cleaning of college and other miscellaneous works started in December, 2013, in 15 months time, Rs. 31,97,142/- was withdrawn from Account "B" and Account "C" of the college for such payment. Rs.11,91,152/- have been withdrawn from the college Account "B" and Rs. 20,05,990/- have been withdrawn from college Account "C". A detailed description of date-wise withdrawal has also been given, which reveals that Sri Kula Kant Jha write to the then Principal regarding necessity of cleaning of forest and bushes in the college. It appears that the request was made by the then Bursar (expenditure) Sri Lukru Kachhap. On the basis of that vouchers and cheques were

prepared by Sri Shankar Rajak (Accountant In-charge) and the same were signed by Bursar and Principal. No one had certified the work against which such payments were being made. A detailed irregularities in the procedure have also been mentioned, which reveals that to purchase order bearing Nos. CC/A/c/68/13 dated 02.02.2013 and CC/A/c69/13 dated 08.02.2013 had been issued by the then Principal Sri R.K.Das for procurement of books for the college to the tune of Rs. 68,22,335/- and the Committee asked for all the relevant files and papers regarding such purchase, but no such files were made available and it appears that the Book Supplier M/s Vista Books, V-196, Near C-11, Shiv Sadhna Mandir, Yamuna Vihar, Delhi-53 prepared and submitted list of books for different subjects to the college. The Head of Department of different subjects ticked the book-list prepared by the supplier and by this act huge amount was withdrawn.

8. Further, the report also reveals the irregularities in B.Ed. Admission process in the Sessions 2012-13, which shows that there was no stock register of Printed Money Receipt for collection of fee of B.Ed. Course. Rather some receipt books were found, which were printed for L.L.B Course and Money Receipts had been issued for 98 candidates, whereas only 69 candidates were finally admitted in B.Ed. Course 2012-13. In DCR, entries of 69 candidates only have been made and the collection from rest candidates have not been found in DCR. It further reveals that payments to private trust for advertisement was also made and the details of such payments are also given.

9. Further, in the year 2013 and 2014 an amount of Rs. 1,11,255/- was also paid to Sri Ram Sweets for supply of sweets packets to the college. It also appears that there is huge outstanding advances to the staff-teaching and non-teaching staff of the college. On the basis of this financial irregularities the present case has been instituted.

10. Learned counsel appearing for the petitioner (in ABA No.1465 of 2016) has submitted that the petitioner has already been retired on 29.02.2012 from class-IV employee and the alleged occurrence are mainly from December, 2013 to February, 2015 i.e after retirement of the petitioner. Since, the period of financial defalcation is post retirement of the petitioner, the petitioner had no authority to misappropriate the huge amount in official capacity, through the petitioner is aged about 65 years and suffering from many diseases.

11. Learned counsel appearing for the petitioner in ABA No.1781 of 2016 has submitted that petitioner has been falsely implicated in this case. It is also submitted that the Financial Advisor on 18.06.2015 submitted its report which is based on the fact that several irregularities have been committed by the petitioner in course of performing his official duty for the period extending from 2010-11 to 2014-15. The allegations are in relation to Co-operative College, Jamshedpur, but it is interesting to note that the petitioner for the year 2010 and 2011, was not posted in the Co-operative College, whereas he was posted as principal of Abdul Barie Memorial College, Golmuri, Jamshedpur. It was further submitted that so far allegation in relation to expenditure for cleaning of college forest clearance and other works as also for purchase of books is concerned, the same have been done after giving due information to the competent authorities of the University. Learned counsel for the petitioner further submitted that the petitioner fully co-operated with the three members committee constituted by the University and during enquiry it was revealed by the letter of one Shri S.N. Das, dealing Assistant that all the defalcations has happened at the desk level and the Principle (petitioner hearing) never knew about such transactions which had been admitted by him vide letter dated 21.07.2014. Learned counsel for the petitioner lastly submitted that the petitioner had earlier preferred anticipatory bail application being A.B.A. No.1021 of 2016 in connection with Golmuri P.S. Case No. 13/2016 in similar issues and this Hon"ble Court had given interim protection to the petitioner vide order dated 05.05.2016 with a direction to co-

operate with the

Investigating Officer. The copy of the order is annexed as Annexure-7 to the bail application.

12. On the other hand, the standing counsel appearing for the Kolhan University has also filed counter affidavit in both the writ applications.

13. In A.B.A. NO. 1465 of 2016 by filing counter affidavit the University has taken the stand at para-7 of the counter affidavit that although the petitioner Kula kant Jha is a retired employee but he joined the hands with the Principal of the College, Dr. Rama Kant Das and entered into a conspiracy and defalcated Rs. 31.97 lacs. It is further stated that the petitioner had given requisition to the Principal for giving him money for cleaning of bushes and while vegetative growth in and around the college. Further for measurement or verification of the work and advance was taken by the petitioner the entire amount was misappropriated.

14. Learned APP has also filed counter affidavit in the instant cases and has referred paragraphs-15,16 and 17 of the case diary which reveals that I.O has recorded the statement of witness Sudhansu Kumar. In paragraphs-16 and 17 of the case diary the statements of the witnesses namely, Brajesh Tiwary and Ajay Kumar Upadhyay have been recorded who have supported the case of the prosecution that during administrative enquiry conducted by the Financial Advisor, it transpires that in lieu of cleaning of the college during the period from December,2013 to February,2015 i.e in 15 months Rs.31.97 lacs have been withdrawn i.e from the Account-"B" Rs. 11,91,152/- and from Account-"C" Rs. 20,05,990/-. In para-23 of the case diary, the same stand has been taken by the witness.

15. The University has filed counter affidavit in A.B.A. No. 1781 of 2016 and during course of argument, the stand has been taken that the petitioner namely, Dr. Rama Kant Das was posted as the Principal of Cooperative College, Jamshedpur at the time of alleged offence and he taken the work from a retired employee of the college and also handed over huge amount for execution of the work

knowing the fact that Kula Kant Jha, who is petitioner in A.B.A. No. 1465 of 2016 has no legal sanctity to involve in any such activities in the college. All these facts have been supported by the witnesses during course of investigation. It is also stated in para-13 of the counter affidavit that the petitioner played havoc with the B.Ed teaching by admitting the students who had never been selected for the purpose and he was instrumental in getting back dated money receipts used to them. In para-15 it is stated that a Departmental Proceeding was conducted and pursuant to the he was dismissed from the service. But in appeal filed by the petitioner against the order of dismissal, the Chancellor of the University cum Governor of Jharkhand had converted the punishment from dismissal to removal from service. Lastly at para-17 it is stated that the

petitioner is also involved in similar type of offence in connection with Golmuri P.S. Case No. 0013/2016 registered under Sections 420, 409, 467, 468, 470, 471, 120B of the IPC.

16. The State has also filed counter affidavit and referred paragraph nos. 15,16,17 and 23, in which statements of the witnesses have been recorded, who have supported the prosecution case. It is further stated that at para-47 of the case diary, the statement about the office order of the Registrar, Kolhan University, Chaibasa has been recorded which reveals that the allegation leveled against the petitioner is true.

17. Further, it is stated that at para-65 of the case diary the statement of the petitioner has been recorded, but it appears that petitioner has given exculpatory statement.

18. Taking into consideration the entire facts and circumstances of the case, prayer for anticipatory bail of both the petitioners is hereby rejected.