

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 37157 of 2020**

Arising Out of PS. Case No.-438 Year-2019 Thana- DHAKA District- East Champaran

Zahid Anwar Alias Jahid Anwar Alias Dabloo, Male, aged about 30 years,
Son of Dabir Ahamad, Resident of Village Chainpur Dhaka, PS- Dhaka,
District- East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Zaki Haider, Advocate
For the State : Ms. Asha Devi, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 05-08-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Zaki Haider, learned counsel for the petitioner and Ms. Asha Devi, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Dhaka PS Case No. 438 of 2019 dated 21.11.2019, instituted under Sections 341, 353, 384, 504, 506, 379 and 427 of the Indian Penal Code.

4. The allegation against the petitioner is that when the informant, who is the Executive Officer of Nagar Parishad, Dhaka went to remove encroachment, he was abused and the key of his vehicle was forcibly snatched and he had come to the



office and had torn papers and had threatened the employees not to come to the office otherwise they would be killed.

5. Learned counsel for the petitioner submitted that he is a fruit seller and has a licensed shop allotted to him by the Nagar Parishad, Dhaka and has been falsely implicated. It was submitted that the incident is said to have taken place on 21.11.2019, but on that day, the informant had come to the shop of the petitioner when he was not there and had demanded Rs. 4 lakhs as he was getting married and on refusal, he had threatened him and had also forcibly taken away packets of various fruits, for which the employee of the petitioner has lodged Complaint Case No. 363 of 2019, before the Sub Divisional Judicial Magistrate, Sikrahana at Dhaka on 23.11.2019. It was submitted that the petitioner has no criminal antecedent. He submitted that during investigation, it has come that no such incident had taken place and the allegations are false. It was submitted that during investigation, only three witnesses have supported the case and all are interested witness inasmuch as two are Assistants in the office of the informant, who is the Executive Officer of the Nagar Parishad, Dhaka and the third one is his driver. It was submitted that the incident is said to have taken place during day time in the presence of many persons



of the public and, according to learned counsel, many independent witnesses who were there had also given their statement which did not support the prosecution story but the same has not been incorporated by the police in the case diary with *mala fide* intention and oblique reasons just to support the case filed by the Executive Officer. Learned counsel submitted that though in the FIR, it has been stated that the petitioner had gone to the office of the informant and had threatened and also torn papers which was reported to the informant, but the complaint of the employees, which is part of the FIR, does not state that any document was snatched, much less torn, which clearly falsifies the prosecution case and also proves that with *mala fide* intention, the case has been lodged. It was submitted that because the three witnesses examined are all office employees of the informant, they have developed the story before the police in their statement and have added that papers were torn by the petitioner, but there also, there is contradiction as the informant has stated that the papers were torn and thrown in the water but the witness has stated that the papers were torn but he was not aware where it was thrown.

6. Learned APP, from the case diary, submitted that the petitioner has not only created obstacle in the duty of the informant while he had gone there to remove encroachment but



had also gone to the Nagar Parishad, Dhaka and had threatened the employees and they had given a written complaint to the informant which is part of the FIR. However, it was not controverted that in the complaint, there is no mentioning about any tearing of papers and also that later in the statement they have developed the allegation of the petitioner having torn papers in the office of the Nagar Parishad, Dhaka.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds that there are contradictions in the prosecution story, especially with regard to the role of the petitioner of tearing the official papers where the written complaint does not disclose such fact and still it has been incorporated in the FIR and later the signatories to the complaint have also developed the story to include the allegation of the petitioner tearing papers and moreover, the fact that one person could go and create such nuisance, both at the site as well as in the office of the Nagar Parishad, Dhaka when obviously, there would have been a police force for removing encroachment and even in the office all the employees were there, indicate that the allegations, as made in the FIR, may not be reliable. However, the Court would not like to give a finding as it is for the trial Court to go into such details



when evidence would be produced, but for the purposes of forming a tentative view, the Court finds that the petitioner has been able to make out a case for interference. Thus, the Court is inclined to allow the prayer.

8. Accordingly, in the event of arrest or surrender before the Court below within six weeks from today, the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned SDJM, Sikrahana at Dhaka District East Champaran in Dhaka PS Case No. 438 of 2019, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further, and further, (i) that one of the bailors shall be a close relative of the petitioner, (ii) that the petitioner and the bailors shall execute bond and give undertaking with regard to good behaviour of the petitioner and (iii) that the petitioner shall co-operate with the Court and police/prosecution. Any violation of the terms and conditions of the bonds or the undertaking or failure to co-operate shall lead to cancellation of his bail bonds.

9. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the petitioner, to the notice of the Court concerned, which shall take immediate



action on the same after giving opportunity of hearing to the petitioner.

10. The petition stands disposed of in the aforementioned terms.

(Ahsanuddin Amanullah, J.)

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