

IN THE HIGH COURT OF JHARKHAND AT RANCHI

A.B.A. No. 485 of 2020

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1. Anandi Mitra @ Anadi Nath Mitra @ Anadi Mitra.
2. Arun Kumar Ojha. . . . .Petitioners

Versus

The State of Jharkhand. . . . .Opposite Party

With

A.B.A. No. 1660 of 2020

Manoj Tripathi. . . . .Petitioner

Versus

The State of Jharkhand . . . . .Opposite Party

With

A.B.A. No. 670 of 2020

Sujit Kumar Panda . . . . .Petitioner

Versus

The State of Jharkhand . . . . .Opposite Party

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Coram: THE HON'BLE MR. JUSTICE RONGON MUKHOPADHYAY

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For the Petitioners : Mr. Amit Kumar Das, Advocate in ABA No. 485/20  
For the Petitioner : Mr. Manish Kumar, Advocate in ABA No. 1660/20  
For the petitioner : Mrs. Ritu Kumar, Advocate in ABA No.670/20  
For the State : Mr. Rajneesh Vardhan, A.P.P.  
: Mrs. Lily Sahay, A.P.P.  
: Mrs. Vandana Bharti, A.P.P.

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05/9-9-2020 Heard the parties.

Since the prayer made in all these applications are common, same are being disposed of by this common order.

All the petitioners apprehend their arrest in connection with Ghatshila P.S. Case No. 70 of 2019 for offences under sections 406, 420, 467, 468, 471/34 of the Indian Penal Code.

The allegations reveal that the office bearers of Ghatshila Advocate Association instead of depositing the income of the association in the bank account had kept it with themselves and have consequently misused the funds. It has been alleged that the office bearers also failed to show the statement of account in spite of repeated insistence by the members. The Governing Body had constituted a five members committee, which on enquiry came to a conclusion of defalcation of Rs.50,00,000/-. It has further been alleged that the allegations were substantiated on an audit conducted by the Jharkhand State Bar Council.

The petitioners in A. B.A. No. 485 of 2020 were the President and the Secretary of Ghatshila Bar Association at the relevant point of time. So far as

petitioner in A.B.A. No. 1660 of 2020 is concerned, he was the Vice President and the petitioner in A.B.A. No. 670 of 2020 was the Assistant Treasurer.

Mr. Amit Kumar Das, learned counsel for the petitioners in A. B.A. No. 485 of 2020, has submitted that the petitioners have falsely been implicated only on account of the fact that they were the President and Secretary of Ghatshila Bar Association at the relevant point of time. He has submitted that during demonetization, some amounts were kept by the Treasurer and the Assistant Treasurer and in spite of repeated meetings including the meetings of the Executive Committee as well as the General Body, the Treasurer had never deposited the amount and had kept it with him in stead of in the account of the association. He also submitted that the petitioners had acted promptly and had sought for an explanation from the Treasurer as to why in spite of undertaking given by him, the amount was not deposited and in fact the petitioners had persistently made efforts to ensure that the amount in question is deposited by the Treasurer. It has been submitted that the FIR was instituted in a hurry and the matter could have been resolved by the Jharkhand State Bar Council itself. It has further been submitted that petitioner no. 1 is a reputed lawyer and senior most member of the Ghatshila Bar Association and petitioner no. 2 is the Secretary and is a dignified practioner.

Mr. Manish Kumar, learned counsel for the petitioner in A.B.A. No. 1660 of 2020, has submitted that the petitioner was the Vice President of the Association at the relevant point of time and was nowhere involved in taking any policy decisions or any decision regarding the finances of the Association. He has submitted that the said petitioner is practicing since long and has a good reputation and infact the entire gamut of allegations are concentrated around the Treasurer who had admitted to have kept the amount with him.

Mrs. Ritu Kumar, learned counsel for the petitioner in A.B.A. No. 670 of 2020, has submitted that initially the Treasurer as well as the petitioner who was the Assistant Treasurer at the relevant point of time were directed by the members to deposit the amount. She has submitted that the petitioner had regularly deposited the amounts, which were collected in the bank account, for which reference has been made to some bank slips as brought on record in the supplementary affidavit. She has also referred to a letter issued by the petitioner that the amount which was in possession of the petitioner has been handed over to the Treasurer. Learned counsel submits that on account of demonetization, the petitioner was constrained to keep certain amount of money, which however, was handed over to the Treasurer and in such circumstances, therefore, this petitioner also cannot be proceeded against in a criminal case.

Learned A.P.Ps. have opposed the prayer for anticipatory bail of the petitioners and have submitted that the amounts defalcated relate to an Association of Advocates and the petitioners in various capacities were required to ensure that the funds of the Association are appropriately handled and on account of the lax attitude of the petitioners, such a huge defalcation had taken place in the accounts of the Association.

The arguments advanced by the learned counsel for the respective parties have been considered and the case diary which has been received has also been perused. It appears that an Executive Committee Meeting was held on 15.12.2017, in which it was detected that the cash kept with the Treasurer and the Assistant Treasurer was to the tune of Rs.15,40,945/-. Both the said persons were directed to deposit the amount in the account of the Association immediately. An explanation was sought for by the President and General Secretary of Ghatshila Bar Association from the Treasurer and Assistant Treasurer vide communication dated 19.01.2018 for not depositing the amount within the designated date. It appears that the Treasurer namely Rajmal Tudu had made a communication on 24.1.2018, through which he had assured that the entire amount will be deposited in the account of the Association. The petitioner in A.B.A. No 670 of 2020 had informed the President and Joint Secretary of the Association vide letter dated 24.01.2018 that the amount which was kept with him has been handed over to the Treasurer Rajmal Tudu. The Minutes of the General Body Meeting dated 30.05.2018 has also been brought on record, from which it appears that the Treasurer Rajmal Tudu had admitted to have Rs.6,70,000/- in his possession, which he undertook to deposit within 15 days. He had also assured that the rest amount will also be deposited. Before the General Body Meeting held on 30.05.2018, a written undertaking was given by the Treasurer. The office bearers of the Association had once again reminded the Treasurer of his undertaking to deposit the amount of Rs.6,70,000/- and his failure to do so and he was therefore once again directed to deposit the said amount before the final audit of the Bar Association is taken up. The audit reports have also been brought on record in A.B.A. No. 485 of 2020.

In the case diary, the statements of some of the members of Ghatshila Bar Association have been recorded, in which the allegations seem to have been supported. The said statements find place at paragraphs 6, 7 and 8 of the case diary. Answering to the notice issued under section 41 A of Cr.P.C., the Treasurer had put the entire blame regarding the defalcation upon other office bearers. All the petitioners had submitted their respective explanations under section 41A of Cr.P.C. as would be evident from a bare perusal of the case diary.

From the entire facts, enumerated above, the pivotal role regarding the defalcation is primarily played by the Treasurer-Rajmal Tudu. The petitioners were the office bearers of Ghatshila Bar Association in various capacities. No doubt, it is true that the supervisory role of the petitioners has not been properly executed by them which perhaps emboldened the Treasurer to indulge in embezzlement of a huge amount belonging to the Association. The petitioner-Sujit Kumar Panda in B.A. No. 670 of 2020 had promptly deposited the amount, which he had kept with him and for which a plausible explanation has also been submitted regarding the demonetization having come into existence though such retention of money was itself unauthorized.

The Minutes of various meetings brought on record are suggestive of the acceptance of the Treasurer regarding the huge amount kept with him. Repeatedly, assurances were given by the Treasurer for complying with the directives of the President, Secretary as well as the Executive Members of Ghatshila Bar Association and the decision of the General Body but the Treasurer seems to have made a volte face while replying to the notice under section 41A of Cr.P.C. as he had given a totally contradictory stand in the said reply, although he has been consistent on being confronted by various office bearers in the meeting that it was he who had kept the amount with him and had undertaken to deposit the said amount in the account of the Association.

The facts and circumstances of the case, as enumerated above, thus indicate that the petitioners have been implicated in the present case only on account of their holding the post of office bearers in various capacities at the relevant point of time and since the Treasurer had accepted to have kept the amount with him and it would be assumed that the amount has been defalcated since it was not deposited in the account of Ghatshila Bar Association in spite of repeated assurances, the petitioners deserve to be granted anticipatory bail.

Accordingly, all the petitioners, named above, are directed to surrender in the court below within a period of four weeks from today and pray for regular bail, and in that event, they will be enlarged on bail, on furnishing bail bond of Rs.10,000/- ( Ten thousand only) each with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate, Ghatshila in connection with Ghatshila P.S. Case No. 70 of 2019, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

These applications stand allowed.

(Rongon Mukhopadhyay, J)

Rakesh/-