

**Case :-** CRIMINAL MISC. BAIL APPLICATION No. - 40839 of 2020

**Applicant :-** Arun Kumar Mishra

**Opposite Party :-** State of U.P.

**Counsel for Applicant :-** Shishir Tandon, Gopal Swarup  
Chaturvedi (Senior Adv.), Shashi Dhar Shukla

**Counsel for Opposite Party :-** G.A.

**Hon'ble Om Prakash-VII, J.**

2nd Supplementary affidavit and counter affidavit filed today are taken on record.

Heard Shri G.S. Chaturvedi, learned Senior Advocate assisted by Shri Shishir Tandon, learned counsel for the applicant, Shri Krishna Pahal, learned Additional Advocate General assisted by Shri Vikas Goswami, learned A.G.A for the State and perused the record.

It is submitted by the learned Senior Counsel appearing for the applicant that the applicant is innocent and has been falsely implicated in the present case. He has not committed the present offence. It is further submitted that in this matter F.I.R. was lodged in the year 2012 at crime no. 743 of 2012 for the offence under Sections 419, 420, 467, 468, 471 and 409 IPC at Police Station concerned against Ajit Singh, Nagendra Singh, S.K. Verma and M/s Kartik Enterprises. Applicant was not named in the F.I.R.. After a gap of about eight years, he was arrested in the matter on 26.10.2020. It is further submitted that during the intervening period he was interrogated on several occasions but nothing was disclosed by the Investigating Officer about his involvement. It is also submitted that allegation against the applicant is that without proper sanction he, being the Executive Engineer, has released more than Rupees One Crore without obtaining no objection certificate from the P.W.D. concerned and ensuring that as to whether road in question was actually constructed or not. Referring to aforesaid allegations it is further submitted that after lodging the aforesaid F.I.R. an enquiry was conducted but applicant was not shown/ held responsible for payment of the amount in question. For the first time on 22.12.2017 applicant was summoned by the concerned Investigating Officer as witness for interrogation and thereafter he was arrested on 26.10.2020. It is next contended that payment said to have been made for construction of road was made on the basis of report submitted by the Engineers. A third party inspection was also made. Hence, in this matter applicant is not responsible in any manner. Trial court has rejected the bail application of the applicant on the basis of insufficient evidence. Main accused Ajit Singh, Nagendra Singh and one another have approached this Court through Criminal Misc. Writ Petition Nos. 4071 of 2013 and 2940 of 2013 which were disposed of and arrest of the petitioners was stayed. No prima facie case is made out against the applicant. At this juncture, referring to documents annexed with the bail application learned Senior Counsel further submitted that at the time of obtaining sanction for prosecution in the matter the Investigating Officer has opined that there was no sufficient material to proceed with the case against the applicant. It is further submitted that applicant has been implicated in this case with malicious intention of the employees / officers of the concerned department. No departmental action has been taken against the applicant. It is next

contended that since applicant had exposed the M.D. of the department for his irregularities and misconduct, due to that reason he was arrested in the matter. No action has been taken against the co-accused. The applicant has no criminal history. He is languishing in jail since 26.10.2020 and in case he is released on bail, he will not misuse the liberty of bail and will cooperate in trial.

On the other hand, learned Additional Advocate General appearing for the State opposing the prayer for bail submitted that in fact in this matter money was released in respect of construction of the road in question relating to 4-5 kilometers but same was not constructed. It is also submitted that though applicant is not named in the F.I.R. yet during investigation his involvement surfaced in the matter. Since payment was made against construction of road but no road was actually constructed and applicant being the Executive Engineer (responsible for payment) has made the payment. All the offences levelled against the applicant are clearly attracted in the present matter. Prior to payment, applicant has not obtained no-objection certificate from the P.W.D. whereas there was stipulation in the work order itself. This fact also shows involvement of the applicant in the present matter. Though some of the cases lodged against the applicant have been quashed, yet a prima facie case against the applicant for misappropriation of public money is made out. At this juncture, learned Additional Advocate General has also referred to counter affidavit and further submitted that 95% of total payment has been made by the applicant. Other co-accused, who are also involved in the matter, have either been chargesheeted or investigation is continuing against them. It is lastly submitted that if applicant is released on bail, he will destroy the evidence.

I have considered the rival submissions made by the learned counsel for the parties and have gone through the entire record carefully.

In this matter, as is evident from the record, payment was made by the applicant from the Government Exchequer (public money) regarding construction of road for 4-5 kilometers, whereas actually no work was done. If the ingredients of the offences levelled in the present matter are compared with the facts and evidence available on record when the applicant being the public servant was responsible for payment in lieu of work done, it cannot be said that no prima -facie case is made out against the applicant, particularly, when without obtaining no objection certificate from the concerned P.W.D. he has made 95% payment of the total amount but no work was actually done. In the circumstances, having regard to the entire facts and circumstances of the case and keeping in view the nature of offence, evidence, complicity of accused and without expressing any opinion on the merits of the case, the Court is of the view that the applicant has not made out a case for bail. The bail application is **rejected**.

**Order Date :- 5.1.2021**

safi