

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28161 of 2015

Arising Out of PS.Case No. -117 Year- 2015 Thana -KISHANGANJ District- KISANGANJ

Rajesh Biyani, S/o Sriprakash Biyani, Resident of Flat No J/4, Siddhi Vatika,
Bardwan Road, P.S.- Silliguri, District-Darjeeling (W.B.). Petitioner
Versus

1. The State of Bihar.
2. Bharat Bhushan Gupta, District Manager, Bihar State Food & Civil Supplies
Corporation Limited, Kishanganj, P.S.- Kishanganj, District -Kishanganj.
.... Opposite Parties

Appearance :

For the Petitioner/s : Mr. B.P. Pandey, Senior Advocate
Mr. Radha Mohan Singh, Advocate
For the BSFC : Mr. Shailendra Kumar Singh, Advocate
For the State : Dr. Mayanand Jha, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-07-2015

By way of this petition under Section 482 of the Code of Criminal Procedure, 1973 (For short 'the Code'), petitioner Rajesh Biyani has assailed the condition imposed in the order dated 02.06.2015 passed by the learned Sessions Judge, Kishanganj in Anticipatory Bail Petition No. 152 of 2015 arising out of Kishanganj P.S. Case No. 117 of 2015 registered for the offences punishable under Sections 406 and 420 of the Indian Penal Code whereby the anticipatory bail was granted to the petitioner.

2. The prosecution case, according to one Bharat Bhushan Gupta, District Manager, the Bihar State Food and Civil



Supplies (For short 'the SFC') Kishanganj, is that the petitioner is a rice miller who entered into an agreement with the SFC for milling of paddy for Kharif Marketing Season 2012-13 and failed to deliver the entire quantity of rice at the godown of Food Corporation of India (For short 'the FCI'). It is alleged that the petitioner procured 42521.22 quintals of paddy, against which rice to the extent of 28489.22 quintals was supposed to be delivered at the godown of the FCI. However, till 31.12.2013 only 8080.49 quintals of rice was delivered at the balance 20408.49 quintals of rice has been embezzled by the petitioner value thereof comes to Rs. 4,41,96,330/- as per the rate of the SFC, i.e., Rs. 2165.56 per quintal. It is further alleged that the petitioner has deposited only Rs. 5.00 Lacs against the aforesaid amount outstanding of Rs. 4,41,96,330/- for which a certificate case being Certificate Case No. 2 of 2014-15 has also been instituted. As such, the petitioner is alleged to have embezzled 20408.73 quintals of rice.

3. On receipt of the aforesaid written report submitted by the informant, the officer-in-charge of Kishanganj Police Station registered Kishanganj P.S. Case No. 117 of 2015 on 12.04.2015 under Section 406 and 420 of the Indian Penal Code against the petitioner and handed over investigation of the case to a Sub-Inspector of Police, Subhash Kumar Mandal.

4. Apprehending his arrest in the aforesaid police case, the petitioner filed an application in the court of Sessions Judge, Kishanganj under Section 438 of the Code seeking bail. After hearing the parties and perusing the record, the learned Sessions Judge, Kishanganj granted anticipatory bail to the petitioner vide order dated 2.6.2015. The operative part of the order reads as under:-

“Perused the F.I.R. It appears that the informant Corporate had entered into some agreement with the petitioner and during that agreement with the petitioner and during that agreement transaction, petitioner has perhaps not delivered as per the agreement.

Keeping in view that the petitioner volunteered to pay the certificate dues, his anticipatory bail prayer is allowed and in the event of his arrest or surrender before the learned counsel below, within one month from this order, he shall be released on bail on his furnishing bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of the learned court below, subject to the condition as laid down u/s 438(2) Cr. P.C. and also with condition that the petitioner will pay a sum of Rs. 70,00,000/- at the time of furnishing bail bond and the bail bond will be accepted provisionally and the petitioner will surrender before the court again after 15 days with another 70,00000/- deposit and



once again petitioner's bail bond will be accepted provisionally for 15 days and petitioner will again deposit Rs. 70,00000 and his bail bond will again be accepted provisionally for 15 days and petitioner will again deposit Rs. 70,00000/- and his bail bond will once again be accepted provisionally for 15 days with another deposit and once again petitioner's bail bond will be accepted provisionally for 15 days and petitioner will again deposit Rs. 70,00000/- with another deposit and once again his bail bond will be accepted for 15 days and when the petitioner will deposit the rest amount of 86,96,330/- petitioner's bail bond will be accepted finally. However, this deposit will be made with the certificate officer, Kishanganj and the evidence of deposit with affidavit will be filed before the learned court below. It is made clear that the deposit of the certificate dues in six instalment as stated above will not prejudice the petitioner's defence in the present criminal case and petitioner will be at liberty to wage all the possible defences, if any, available to him in spite of the deposit as per this order, if the petitioner fails to pay as per the condition stated above he will be taken into custody forthwith. Every time he will have to surrender in person before the court with the evidence of further payment."

5. Mr. Bibhuti Prasad Pandey, learned Senior Counsel appearing for the petitioner submitted that the conditions imposed by



the learned Sessions Judge while granting anticipatory bail to the petitioner are not only onerous but also unreasonable. It amounts to putting a fetter on the order granting anticipatory bail as the petitioner is unable to satisfy the condition which is beyond his means and powers. It has further been contended that the petitioner never volunteered before the learned Sessions Judge to pay the dues claimed in the certificate proceeding instituted by the SFC in the manner indicated in the impugned order. According to him, the learned Sessions Judge while dealing with the application for anticipatory bail had no jurisdiction to impose such condition.

6. He has submitted that the petitioner had entered into an agreement with the SFC which contains clauses for redressal of the dispute arising from such agreement, one of them being an arbitration proceeding by the District Magistrate of the concerned district and, subsequent thereto, the recovery proceeding under the Bihar and Orissa Public Demand Recovery Act, 1914 (For short 'the PDR Act'). The SFC have already instituted a certificate case for the amount involved in the present FIR which clearly goes to show that the SFC has resorted to a remedy available under the agreement and, therefore, institution of the FIR upon allegation of criminal offence is completely illegal and the entire endeavour of the SFC is to pressurize the miller to pay the amount.



7. Mr. Pandey has submitted that under the agreement the petitioner was not required to make any payment to the SFC and the petitioner is having the milled rice in his godown but the SFC is not in a position to lift the same in absence of storage capacity. According to him, the indifferent attitude of the FCI led to the present set of dispute. One of the rice millers under the R.T.I. Act had asked for the steps which were being taken by the SFC for storage of milled rice and, in response thereto, the SFC clearly admitted the fact that the FCI did not co-operate, rather primary reason for the delayed or non-lifting of the milled rice was attributable to the insufficient storage facility and lack of infrastructure to deal with object as envisaged in the guidelines for Kharif Procurement Operation 2012-13. He has submitted that earlier also the SFC had issued letters that in view of limited infrastructure facility available at the FCI godown, there was inordinate delay and the millers were unable to deliver milled rice by cut-off date i.e. 31.12.2013.

8. Mr. Pandey has submitted that before the Certificate Officer an objection under Section 9 of the PDR Act has already been filed wherein quantum has been disputed, but no final order has been passed. He has submitted that since the amount is disputed until and unless objection under Section 9 of the PDR Act is



adjudicated, no coercive step can be taken. According to him, the dispute with regard to quantum of supply of paddy, reasons for non-delivery, settlement of account in view of the milling charges which was payable to the petitioner and the transportation charges payable to the petitioner by the SFC and other reasons due to which the milled rice could not be delivered at the godown of the FCI, were brought to the notice of the Managing Director, SFC and after a patient hearing in order to settle the dispute, a mechanism was evolved wherein the petitioner was not allowed to dispute the quantum of paddy delivered, however, the amount payable to the petitioner by way of transportation charges and milling charges were reconciled and the balance amount was decided to be a liability against the petitioner, which was required to be cleared. The SFC categorically refused to accept the rice lying in the premises of the petitioner.

9. Mr. Pandey has further submitted that in the certificate proceeding also, the petitioner had earlier deposited Rs.5.00 lacs and the hearing was going on. However, in order to settle the dispute the petitioner made a representation before the Managing Director, SFC bringing to his notice all the facts and upon due consideration an affidavit was filed and an undertaking has already been given and a sum of Rs. 10.00 Lacs has been deposited and the balance amount of



actual liability is to be paid in installments of Rs. 5,09,195/- each. In pursuance of the said affidavit, the Managing Director, SFC taking into consideration the undertaking, has already forwarded it to the District Manager, Kishanganj vide Memo No. 4731 dated 28.04.2015. It has been submitted that in view of the undertaking given by the petitioner until and unless the petitioner defaults in making payment, the SFC cannot allege any criminal breach of trust and institute FIR to pressurize the petitioner for payment. Further, the petitioner is still ready to deliver the milled rice which the SFC can lift or can specify the space where the petitioner would deliver the same but contrary to the terms of agreement the value of the milled rice is being asked for by resorting to coercive measure by instituting an FIR.

10. On the other hand, Mr. Shailendra Kumar Singh, learned counsel for the SFC submitted that the aforesaid pre-conditions put by the court for grant of anticipatory bail to the petitioner were called for and justified in the facts and circumstances of the case. It has also been pointed out that the petitioner intentionally and knowing fully well the entire position, failed to deliver the entire quantity of rice at the godown of the FCI. He has misrepresented the facts and has never shown his willingness to deliver the rice at the godown of the FCI after procuring 42521.22



quintals of paddy. According to him, as per terms of the agreement the petitioner was required to deliver proportionate rice i.e., 67% of paddy procured under the agreement. He has further contended that simply because the SFC has filed a certificate case against the petitioner under the PDR Act, the petitioner cannot be protected from being prosecuted under the penal offences as the facts alleged in the FIR clearly attract ingredients of the offence punishable under Section 406 and 420 of the Indian Penal Code. He has further contended that the petitioner cannot change his stand before this Court as he has already given an undertaking on affidavit before the Managing Director, SFC to clear the amount of actual liability by making payment in installments.

11. Dr. Mayanand Jha, learned Additional Public Prosecutor for the State has submitted that in the facts and circumstances of the case the Sessions Judge passed impugned order with the intention of protecting the interest of the SFC in the matter. According to him, the allegations made are extremely serious as it is alleged that the petitioner has cheated the SFC to the extent of 20408.49 quintals of milled rice, value whereof comes to Rs. 4,41,96,330/-, as per the rate of SFC i.e. Rs. 2,165/- per quintal. He has contended that the conditions imposed by the learned Sessions Judge for grant of anticipatory bail to the petitioner are not only

reasonable but justified too.

12. I have carefully considered the rival contentions and perused the record.

13. The 41st Report of The Law Commission dated 24.09.1969 recommended, for the first time, inclusion of a provision for anticipatory bail. Section 438 of the Code contemplates an application by a person on an apprehension of arrest in regard to the commission of a non-bailable offence, the object being to relieve a person from unnecessary harassment or disgrace and it is granted when the court is otherwise convinced that there is no likelihood of misuse of the liberty granted since he would neither abscond nor take such step so as to avoid due process of law. Such application has to be filed either to the High Court or to the Court of Sessions for a direction that in the event of his arrest, he shall be released on bail.

14. At this juncture, it is useful to refer Section 438 of the Code which reads as under:-

“438. Direction for grant of bail to person apprehending arrest.-(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section that in the event of such arrest he shall be released on bail; and

that Court may, after taking into consideration, *inter alia*, the following factors, namely:-

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the applicant to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the applicant by having him so arrested, either reject the application forthwith or issue an interim order for the grant of anticipatory bail:

Provided that, where the High Court or, as the case may be, the Court of Session, has not passed any interim order under this sub-section or has rejected the application for grant of anticipatory bail, it shall be open to an officer incharge of a police station to arrest, without warrant, the applicant on the basis of the accusation apprehended in such application.

(1-A) Where the Court grants an interim order under sub-section (1), it shall forthwith cause a notice being not less than seven days notice, together with a copy of such order to be served on the Public Prosecutor and the Superintendent of Police, with a view to give the Public Prosecutor a reasonable opportunity of being heard when the application shall be finally heard by the Court.

(1-B) The present of the applicant seeking anticipatory bail shall be obligatory at the time of final hearing of the application and passing of final order by the Court, if on an application made to it by the Public Prosecutor, the Court considers such presence necessary in the interest of justice.

(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.

(3) If such person is thereafter arrested without warrant by an officer incharge of a police station on such accusation, and is prepared either at the time of arrest or at any time while in the custody of such officer to give bail, he shall be released on bail, and if

a Magistrate taking cognizance of such offence decides that a warrant should issue in the first instance against that person, he shall issue a bailable warrant in conformity with the direction of the Court under sub-section (1).”

15. Sub-section (3) of Section 437 of the Code, inter alia, envisages that when a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII or the Indian Penal Code (45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court shall impose the conditions:- (a) that such person shall attend in accordance with the conditions of the bond executed under this Chapter, (b) that such person shall not commit an offence similar to the offence of which he is accused, or suspected, of the commission of which he is suspected, and (c) that such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or tamper with the evidence, and may also impose, in the interests of justice, such other conditions as it considers necessary.

16. In the present application, the only point for

consideration is whether the condition of depositing the amount in instalments as indicated hereinabove in the certificate proceeding for anticipatory bail is sustainable in law?

17. On careful scrutiny of the provisions of sub-section (2) of section 438 and sub-section (3) of Section 437 of the Code, it is clear that the court having regard to the facts and circumstances of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code. Any other conditions not specified in the provisions of Section 438 of the Code can also be imposed inasmuch as the conditions specified are inclusive, but the other conditions which could be imposed must be *ejusdem generis* as the condition specified in Section 438. The discretion of the court while putting condition should be a judicial discretion.

18. A similar question came up for consideration before the Supreme Court in **Munish Bhasin and others Vs. State (Government of NCT of Delhi) and Anr. [(2009) 4 SCC 45]**. In the said case, the Supreme Court has observed as under:-

“10. It is well settled that while exercising discretion to release an accused under Section 438 of the Code neither the High Court nor the Sessions Court would be justified in imposing freakish conditions. There is no manner of doubt that the

court having regard to the facts and circumstances of the case can impose necessary, just and efficacious conditions while enlarging an accused on bail under Section 438 of the Code. However, the accused cannot be subjected to any irrelevant condition at all.

11. The conditions which can be imposed by the court while granting anticipatory bail are enumerated in sub-section (2) of the Section 438 and sub-section (3) of Section 438 of the Code. Normally, conditions can be imposed (i) to secure the presence of the accused before the investigating officer or before the court, (ii) to prevent him from fleeing the course of justice, (iii) to prevent him from tampering with the evidence or to prevent him from inducing or intimidating the witnesses so as to dissuade them from disclosing the facts before the police or court, or (iv) restricting the movements of the accused in a particular area or locality or to maintain law and order, etc. To subject an accused to any other condition would be beyond jurisdiction of the power conferred on court under Section 438 of the Code.

12. While imposing conditions on an accused who approaches the court under Section 438 of the Code, the court should be extremely chary in imposing conditions and should not transgress its jurisdiction or power by imposing the conditions which are not called for at all. There is no manner of doubt that

the conditions to be imposed under Section 438 of the Code cannot be harsh, onerous or excessive so as to frustrate the very object of grant of anticipatory bail under Section 438 of the Code.

13. In the instant case, the question before the Court was whether having regard to the averments made by Ms Renuka in her complaint, the appellant and his parents were entitled to bail under Section 438 of the Code. When the High Court had found that a case for grant of bail under Section 438 was made out, it was not open to the Court to direct the appellant to pay Rs 3,00,000 for past maintenance and a sum of Rs 12,500/- per month as future maintenance to his wife and child. In a proceeding under Section 438 of the Code, the Court would not be justified in awarding maintenance to the wife and child.

14. The case of the appellant is that his wife Renuka is employed and receiving a handsome salary and therefore is not entitled to maintenance. Normally, the question of grant of maintenance should be left to be decided by the competent court in an appropriate proceedings where the parties can adduce evidence in support of their respective case, after which liability of husband to pay maintenance could be determined and appropriate order would be passed directing the husband to pay amount of maintenance to his wife. The record of the instant case indicates that the wife of the appellant has



already approached the appropriate court for grant of maintenance and therefore the High Court should have refrained from granting maintenance to the wife and child of the appellant while exercising powers under Section 438 of the Code. The condition imposed by the High Court directing the appellant to pay a sum of Rs 12,500 per month as maintenance to his wife and child is onerous, unwarranted and is liable to be set aside."

19. A Bench of five Judges of the Supreme Court in **Gurbaksh Singh Sibbia etc. Vs. State of Punjab [(1980) 2 SCC 565]**, while dealing mainly that the question for consideration that can validly weigh the court while granting bail under Section 438 examined various facets of the issue and ruled as under:-

"26. We find a great deal of substance in Mr. Tarkunde's submission that since denial of bail amounts to deprivation of personal liberty, the Court should lean against the imposition of unnecessary restrictions on the scope of S. 438 specially when no such restrictions have been imposed by the legislature in the terms of that section. S. 438 is a procedural provision which is concerned with the personal liberty of the individual, who is entitled to the benefit of the presumption of innocence since he is not, on the date of his application for anticipatory bail, convicted of the offence in respect of which he seeks bail. **An over-generous infusion of constraints and conditions which are not to be found in S. 438 can make its**



provisions constitutionally vulnerable since the right to personal freedom cannot be made to depend on compliance with unreasonable restrictions. The beneficent provision contained in S. 438 must be saved, not jettisoned. No doubt can linger after the decision in *Maneka Gandhi*, (1978) 1 SCC 248 : (AIR 1978 SC 597) that in order to meet the challenge of Art. 21 of the Constitution, the procedure established by law for depriving a person of his liberty must be fair, just and reasonable. S. 438, in the form in which it is conceived by the legislature, is open to no exception on the ground that it prescribes a procedure which is unjust or unfair. We ought, at all costs, to avoid throwing it open to a Constitutional challenge by reading words in it which are not to be found therein.” (Emphasis mine)

20. In **Sandeep Jain Vs. National Capital Territory of Delhi [(2000) 2 SCC 66]**, in para 4, the Supreme Court held as under:-

“4. We are unable to appreciate even the first order passed by the Metropolitan Magistrate imposing the onerous condition that an accused at the FIR stage should pay a huge sum of Rs 2 lakhs to be set at liberty. If he had paid it is a different matter. But the fact that he was not able to pay that amount and in default thereof he is to languish in jail for more than 10 months now, is sufficient indication that he was unable to make up the amount. Can he be detained in



custody endlessly for his inability to pay the amount in the range of Rs 2 lakhs? If the cheques issued by his surety were dishonoured, the Court could perhaps have taken it as a ground to suggest to the payee of the cheques to resort to the legal remedies provided by law. Similarly if the Court was dissatisfied with the conduct of the surety as for his failure to raise funds for honouring the cheques issued by him, the Court could have directed the appellant to substitute him with another surety. But to keep him in prison for such a long period, that too in a case where bail would normally be granted for the offences alleged, is not only hard but improper. It must be remembered that the Court has not even come to the conclusion that the allegations made in the FIR are true. That can be decided only when the trial concludes, if the case is charge-sheeted by the police.”

21. In **Sheikh Ayub Vs. State of M.P. [(2004) 13 SCC 457]**, the Supreme Court held that a direction to pay a portion of the amount misappropriated by the accused to the complainant as a condition of bail is unwarranted.

22. In **U. Palaniappan & Another vs. Sub-Inspector of Police [(2005) 10 SCC 464]** in para 3, a three Judge Bench of the Supreme Court ruled as under:-

“3. On the facts and circumstances of this case, the condition imposed by the High Court while granting anticipatory bail that the first appellant should deposit



Rs 10 lakhs and the second appellant should deposit Rs 5 lakhs before getting the benefit of anticipatory bail in our opinion is onerous. Hence, in modification of the said order while affirming the grant of anticipatory bail, we direct the appellants to furnish a self-bond of Rs 50,000 each and one surety for the like sum each to the satisfaction of the Court or the arresting authority as the case may be.”

23. In **Ramathal & Others vs. Inspector of Police and Another** [(2009) 12 SCC 721], the Supreme Court was considering a case in which the High Court had passed an order granting anticipatory bail on condition that in the event of arrest, the accused persons shall be enlarged on bail on their depositing Rs. 32,00,000/- before the Judicial Magistrate and also on their executing their personal bond of Rs. 1,00,000/- with two sureties each for the like sum to the satisfaction of the Magistrate. In that case after hearing the parties, the Supreme Court ruled as under:-

“13. It appears that in the aforesaid facts and circumstances, the High Court passed the impugned order with the intention of protecting the interest of the complainant in the matter. In our considered opinion, the approach of the High Court was incorrect as under the impugned order a very unreasonable and onerous condition has been laid down by the Court as a condition precedent for grant of anticipatory bail.”

24. In **Amarjeet Singh vs. State of NCT of Delhi**)

[(2009) 13 SCC 769], the Supreme Court held as under:-

“7. Having regard to the facts and circumstances of the present case, we have no hesitation in coming to the conclusion that the imposition of condition to deposit the sum of Rs 15 lakhs in the form of FDR in the trial court is an unreasonable condition and, therefore, we set aside the said condition as a condition precedent for granting anticipatory bail to the appellant-accused.”

25. Similarly, in **Sumit Mehta vs. State (NCT of Delhi)**

[(2013) 15 SCC 570], the Supreme Court in paras 14 and 15 ruled as under:-

“14. Thus, in the case on hand, fixed deposit of Rs 1,00,00,000 for a period of six months in the name of the complainant and to keep the FDR with the investigating officer as a condition precedent for grant of anticipatory bail is evidently onerous and unreasonable. It must be remembered that the court has not even come to the conclusion whether the allegations made are true or not which can only be ascertained after completion of trial. Certainly, in no words are we suggesting that the power to impose a condition of this nature is totally excluded, even in cases of cheating, electricity pilferage, white-collar crimes or chit fund scams, etc.

15. The words “any condition” used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition

has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed.

(Emphasis mine)

26. The aforesaid decisions of the Supreme Court give an abundant clarity as to the ambit and scope of sub-section (2) of Section 438 of the Code. The Supreme Court has always frowned on onerous condition being imposed as a condition precedent for granting anticipatory bail. In my opinion, any condition which has no reference to the fairness and propriety of investigation and trial cannot be imposed while exercising power conferred under Section 438 of the Code.

27. Thus, in the case on hand the conditions imposed by the learned Sessions Judge, Kishanganj for grant of anticipatory bail to the petitioner cannot be upheld. It is not disclosed from the record that the learned Sessions Judge considered the entire facts of the case in proper perspective and proceeded to dispose of the prayer for anticipatory bail oblivious of the facts of the case and contrary to legal position with regard to law relating to grant of anticipatory bail. The learned Sessions Judge should have considered the entire

facts of the case including the nature of the offence alleged and in the light thereof should have considered the prayer for grant of anticipatory bail.

28. In view of the aforesaid discussions, the petition succeeds. I am of the opinion that the entire order passed by the learned Sessions Judge, Kishanganj is required to be set aside and the matter to be reconsidered in accordance with law. I, accordingly, set aside the impugned order dated 02.06.2015 passed in Anticipatory Bail Petition No. 152 of 2015 arising out of Kishanganj P.S. Case No. 117 of 2015 and remand the matter to the learned Sessions Judge, Kishanganj to consider the prayer for anticipatory bail of the petitioner afresh in accordance with law taking into consideration the facts and circumstances of the case including the nature of the offence alleged. The learned Sessions Judge is requested to dispose of the aforesaid ABP No. 152 of 2015, giving reason for his decision as expeditiously as possible, preferably within a period of three weeks from the date of communication of the order.

29. The petition is, accordingly, disposed of.

(Ashwani Kumar Singh, J.)

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