

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.36714 of 2015

Arising Out of PS.Case No. -152 Year- 2015 Thana -DIHRINAGAR District- SASARAM
(ROHTAS)

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Rakesh Kumar S/o Ram Bihari Prasad Singh resident of village - Gangaoli Tola,
P.S. Dehri, District - Rohtas

.... Petitioner

Versus

1. The State of Bihar
2. The District Manager, Bihar State Food and Civil Supplies Corporation Ltd.
Rohtas at Sasaram

.... Opposite Parties.

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Appearance :

For the Petitioner/s	:	Mr. Sumeet Kumar Singh, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP
For O. P. No. 2	:	Mr. Gopal Krishna, Advocate
		Mr. S. K. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 14-12-2015

By way of this application under Section 482 of the Code of Criminal Procedure, 1973 (For short 'Cr. P.C.'), petitioner, Rakesh Kumar, has assailed the conditions imposed in the order dated 27.06.2015, passed by the learned 1st Additional Sessions Judge, Rohtas at Sasaram in A.B.P. No. 1117 of 2015, arising out of Dehri (Town) P.S. Case No. 152 of 2015, registered for the offences punishable under Sections 406, 409 and 420 of the Indian Penal Code, whereby the learned 1st Additional Sessions Judge,



while allowing the application of the petitioner under Section 438 Cr. P.C., observed that the petitioner shall deposit Rs.49,50,000/- to the department concerned through demand draft and receipt of the same should be filed in the Court before surrendering in the Court below and rest amount to the tune of Rs.49,19,251.55/- shall be paid in five equal installments.

2. Learned counsel for the petitioner has contended that such an onerous condition cannot be imposed by the Court while granting privilege of pre-arrest bail. In support of his contention, he has placed reliance on an unreported judgment of this Court passed in the matter of **Rajesh Biyani Vs. State of Bihar & Anr. [Cr. Misc. No. 28161 of 2015]**.

3. Learned counsel for the State and learned counsel for the FCI have conceded that the conditions imposed by the Court below for grant of pre-arrest bail to the petitioner are erroneous condition which can not be justified in law.

4. I have heard respective counsel for the parties and perused the record.

5. This Court, vide order dated 14.07.2015, passed in the matter of **Rajesh Biyani** (supra), had examined the provisions prescribed under Sections 437 Cr.P.C. and 438 Cr. P.C. and had placed reliance on the decisions of the Supreme Court in



Munish Bhasin & Ors. Vs. State (NCT of Delhi) & Anr., [(2009) 4 SCC 45]; Gurbaksh Singh Sibbia etc. Vs. State of Punjab, [(1980) 2 SCC 565]; Sandeep Jain Vs. National Capital Territory of Delhi, [(2000) 2 SCC 66]; Sheikh Ayub Vs. State of M.P., [(2004) 13 SCC 457]; U. Palaniappan & Another Vs. Sub-Inspector of Police, [(2005) 10 SCC 464]; Ramathal & Others Vs. Inspector of Police, [(2009) 12 SCC 721]; Amarjeet Singh Vs. State of NCT of Delhi, [(2009) 13 SCC 769] and Sumit Mehta Vs. State (NCT of Delhi), [(2013) 15 SCC 570] for arriving at a conclusion that grant of bail in an exercise of discretion by the Court based on consideration of several factors and imposition of onerous and stringent conditions attached to the granting of bail are totally unknown to law.

6. Keeping in mind the facts of the present case and the reasons assigned in the unreported decision of this Court in **Rajesh Biyani** (supra), the impugned order dated 27.06.2015 cannot be sustained. Accordingly, it is set aside. The matter is remanded to the Court below to consider the prayer for anticipatory bail of the petitioner afresh, on merits, in accordance with law considering the facts and circumstances of the case including the nature of the offence alleged.

7. The court below is directed to dispose of

the aforesaid A.B.P. No. 1117/2015, giving reason for its decision as early as possible, preferably within a period of four weeks from the date of receipt/communication of this order.

8. With the aforesaid observation and direction, the application is disposed of.

9. It is made clear that I have not examined the merits of the case.

(Ashwani Kumar Singh, J.)

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