

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39835 of 2014

Arising Out of PS.Case No. -113 Year- 2014 Thana -MADHEPURA District- MADHEPURA

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Yubraj Bhagat Son of Late Satyadeo Bhagat Resident of Village -
Baijnathpur, P.S. -Sour Bazar, District - Saharsa

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

2 16-04-2015 Heard learned counsel for the parties.

The prayer of the petitioner for grant of anticipatory bail in relation to the offences punishable under Sections-406, 420 and 120(B) of the Indian Penal Code is primarily based on the ground that when the terms and conditions of the agreement of the petitioner with Bihar State Food and Civil Supply Corporation is strictly taken into account, it can be found that Bihar State Food and Civil Supplies Corporation had itself made a default by not complying the terms and conditions of the agreement and the recovery of alleged amount of loss from petitioner by threat and coercion of certificate proceedings and/or criminal case is merely an

arm twisting method.

Mr. Singh, in this regard also points out that the certificate case against the petitioner has already been quashed and therefore, the petitioner will be at least entitled for privilege of anticipatory bail for the present.

In the considered opinion of this Court, whatever may have been the fate of certificate proceeding on account of the judgment of this Court dated 22.07.2014, in the case of **Sone Valley Rice Mill vs the State of Bihar & Ors (C.W.J.C No. 13746 of 2013)**, wherein, it was held that when there was no clause of recovery of the amount under the provisions of Bihar Public Demand Recovery Act, the Corporation could not have recovered the same by way of certificate proceeding from rice millers including the petitioner, will have nothing to do with the criminal case.

In the criminal case, the allegation against the petitioner is that on 31.08.2011 and 16.08.2011 the petitioner had lifted 35453 quintal and 8 Kg of paddy



from the different centers and was under an obligation to deposit 23753.56 quintal of CMR(Customized Mill Rice). Further prosecution case is that the petitioner in fact out of 23753.56 quintal has already deposited 18090 quintal C.M.R. and was still liable to refund the rest of the 5663 quintal and 56 Kg of CMR which having been not done by him despite the notice of the Corporation, the petitioner had misappropriated sum of Rs. 1,07,78,490/-. In fact the FIR itself records that after the notice of Corporation to the petitioner he had made payment of Rs. 37,05,000/- leaving still Rs. 70,73,490/- to be payable. Learned counsel for the petitioner explains that out of Rs. 70,73,490/-, the petitioner has again paid Rs. 12,00,000/- leaving now balance to be paid to be Rs. 58,73,490/-.

In presence of all these materials the reliance on the terms and conditions of the agreement will have no meaning because even when the petitioner was asked to pay the amount by the Corporation he had initially paid



Rs. 35,00,000/- and then again 12,00,000/-, which would only be an evidence to show that the petitioner had owed the money for not refunding the CMR as explained above. In such a situation, the petitioner committing a white color offence will not be entitled for privilege of anticipatory bail if he is not prepared to pay the amount.

Faced with this situation, Mr. Singh submits that the petitioner is prepared to make payment of the balance amount of Rs. 58,00,000/- in a period of one year in four equal installments.

That being so if the petitioner namely, **Yubraj Bhagat** surrenders within a period of one month from today with 1/4th of the amount of Rs. 58,00,000/- as first installment in the form of bank draft in the name of Bihar State Food and Civil Supplies Corporation, he shall be granted provisional bail for a period of three months. The petitioner's provisional bail after a period of three months shall be again extended if another 1/4th amount of Rs. 58,00,000/- is paid by him in the likewise



manner. The petitioner after period of three months shall again surrender and this time he will pay the third part of $1/4^{\text{th}}$ amount of Rs. 58,00,000/- and his provisional bail will again be extended for a period of three months. Finally the last part of $1/4^{\text{th}}$ amount of Rs. 58,00,000/- shall be deposited by the petitioner and if total payment is made in the manner prescribed above the provisional bail of the petitioner shall be confirmed. All such payment would be made by bank draft in the name of Bihar State Food and Civil Supply Corporation and they would be also handed over to the concerned District Manager of Corporation by this Court below without any delay.

Subject to the compliance of the aforesaid conditions by the petitioner, **Yubraj Bhagat** on surrender within a period four weeks from today shall be released on bail on furnishing bail bonds of Rs. 10000/- each with two sureties of the like amount to the satisfaction of Chief Judicial Magistrate, Madhepura in

connection with Madhepura P.S. Case No. 113 of 2014 on the following additional terms and conditions, namely:-

(i) That both the bailors will be close family relatives of the petitioners, who will undertake an affidavit giving genealogy as to how they are related with the petitioners. The bailors will also undertake to inform the court if there is any change in the addresses of the petitioners.

(ii) That the affidavit shall clearly state that the petitioners are not accused in any other case and if they are, they shall not be released on bail.

(iii) That the bailors shall also state on affidavit that they will inform the court concerned, if the petitioners are implicated in any other case of similar nature after their release in the present case and thereafter the

court below will be at liberty to initiate the proceeding for cancellation of their bail on the ground of misuse.

(iv) That the petitioners will be well represented on each and every date in course of trial and if they fail to do so on two consecutive dates, their bail will be liable to be cancelled on this ground alone.

With the aforesaid observation and condition this application is disposed of.

(Mihir Kumar Jha, J)

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