

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.853 of 2016

Arising Out of PS.Case No. -207 Year- 2015 Thana -MUFFASIL District- WEST CHAMPARAN
(BETTIAH)

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1. Ramod Prasad Son of late Bijali Raut Resident of Village- Ganawli, P.s Muffasil, (Bettiah), District West Champaran (Bettiah), Proprietor of M/s Bajrang Rice Mill, Bhagwanpur, West Chmaparan (Bettiah) Bihar.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The Bihar State Food and Civil Supply Corporation Limited, West Champaran, Bettiah.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Adv.
Mr. Saket Tiwary, Adv.
Mr. Sanjeev Kumar Dubey, Adv.
For the Opposite Party/s : Mr. Asha Kumari(App)
Mr. Awadhesh Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 18-01-2016 Heard learned counsel for the petitioner, learned counsel for the State and learned counsel for the Bihar State Food & Civil Supplies Corporation Limited.

By way of the present application preferred under Section 482 of the Code of Criminal Procedure (for short 'CrPC'), the petitioner Ramod Prasad has assailed the conditions imposed in the order dated 21.05.2015 passed by the learned Sessions Judge, West Champaran, Bettiah in A.B.P. No. 9410 of 2015 in connection with Bettiah Muffasil P.S.Case No.207 of 2015 registered under Sections 409 and 420 of the Indian Penal Code,

whereby the petitioner has been granted pre-arrest bail in exercise of power conferred under Section 438 CrPC on furnishing certain onerous conditions. The relevant part of the order reads as under :

“(i) The coercive step against the petitioner is stayed for a period of one month from today and in the meantime he is directed to realize the matter with B.S.F.C. on the point of dues C.M.R. and after realization of the dues petitioner is directed to deposit 20 percent of the amount if so realized and if the matter is not realized then petitioner is directed to deposit 20 percent of the recoverable amount i.e. Rs. 73,56,405.74 within a month and only thereafter he will surrender before the learned court below. He is also directed to file affidavit at the time of furnishing bail bond that he will deposit rest amount after accounting and settlement in the certificate case or by arbitration as given in the agreement within a year from today and in case of non-compliance of the condition the learned court below shall be at liberty to cancel the bail bond of the petitioner.

(ii) Petitioner is further directed to co-operate in the investigation/trial and he will remain present physically on each and every date before the court below after submission of charge sheet till framing of charge and in case of failure without any reasonable explanation his bail bond shall be cancelled by the learned court below.”

It has been contended by the learned counsel for the petitioner that the conditions mentioned in Clause (1) are onerous conditions and should not have been imposed by the Court while exercising power under Section 438 CrPC. In support of his contention, he has placed reliance on an unreported judgment of

this Court dated 14.07.2015 passed in the matter of Rajesh Biyani Vs. State of Bihar and another (Cr.Misc. No. 28161 of 2015).

On the other hand, learned counsel for the State and the learned counsel for the Bihar State Food and Civil Supplies Corporation Limited have opposed the application. They have submitted that there is no illegality in the order passed by the learned Sessions Judge.

I have heard learned counsel for the parties and carefully perused the record.

This Court vide order dated 14.07.2015 passed in the case of Rajesh Biyani (Supra) had occasion to examine the provisions prescribed under Sections 437 and 438 CrPC and the decisions of the Supreme Court in the matters of **Munish Bhasin and others Vs. State (Government of NCT of Delhi) and 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 and Another [(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]. After examining the statutory provisions and the decisions aforesaid, this Court came to the conclusion that the grant of bail is an exercise of discretion by the Court based on consideration of several factors and imposition of onerous and contingent conditions attached to the grant of bail are wholly illegal.

Keeping in mind the facts of the present case and the principles laid down in the matter of Rajesh Biyani (Supra), the impugned order dated 21.05.2015 cannot be sustained. Accordingly, it is set aside. The matter is remanded to the court below to consider the prayer for grant of 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 within a period of two months from the date of receipt/production of a copy of the order.

It is made clear that this Court has not expressed any opinion on the merits of the case of the petitioner. After hearing the parties, the court below would be at liberty to pass any order as it deems fit and proper in the facts and circumstances of the case.

With these observations, the application stands allowed.

(Ashwani Kumar Singh, J)

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