

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44418 of 2015

Arising Out of PS.Case No. -35 Year- 2015 Thana -DAWATH District- SASARAM (ROHTAS)

=====

1. Lal Babu Gupta Son of Daroga Sah Resident of Village Ram Nagar, P.s
Dawath, District Rohtas.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Dinesh Prasad Singh, District Manager State Food Corporation, Rohtas at
Sasaram.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Rajani Kant Singh

For the Opposite Party/s : Mr. Shyam Bihari Singh(App)

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 18-01-2016 Heard learned counsel for the petitioner and learned
counsel for the State.

By way of the present application preferred under
Section 482 of the Code of Criminal Procedure (for short 'CrPC'),
the petitioner Lal Babu Gupta has assailed the conditions imposed
in the order dated 27.06.2015 passed by the learned 1st Additional
Sessions Judge, Sasaram in A.B.P. No. 1097 of 2015 in
connection with Dawath P.S.Case No.35 of 2015 registered under
Sections 406, 420 and 120-B of the Indian Penal Code, whereby
pre-arrest bail in exercise of power conferred under Section 438
CrPC has been granted to the petitioner on the conditions that he
will deposit Rs.8,60,000/- as cash security along with bail bond of

Rs.10,000/- with two sureties of the like amount each to the satisfaction of the court below.

It has been contended by the learned counsel for the petitioner that such an onerous condition cannot be imposed by the Court while granting bail. 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 has contended that the allegations made in the FIR are quite serious and therefore the Court has committed no illegality in passing the order whereby the petitioner has been directed to deposit Rs.8,60,000/- as cash security.

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 27.06.2015 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.

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)

Pradeep/-

U		T	
---	--	---	--