

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34965 of 2016

Arising Out of PS.Case No. -125 Year- 2016 Thana -NOORSARAI District- NALANDA
(BIHARSHARIFF)

1. Ramesh Bhushan, Son of Late Ramsharan Prasad, Resident of Village-
Jaiprakashpur, P.O. + P.S.- Noor Saria, District- Nalanda.

.... Petitioner/s

Versus

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

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Shashi Bhushan Kumar, Advocate
For Opposite Party No. 2 Mr.Aishwarya Riti, Advocate
For the Opposite Party/s : Mr. Uday Pratap Singh, A.P.P.

CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

2 08-09-2016 Heard learned counsel for the petitioner, learned
A.P.P. for the State as well as learned counsel appearing on behalf
of the Opposite Party No.2, Bihar State Food and Civil Supplies
Corporation Ltd., Patna.

The prosecution case as made by the District Manager,
Bihar State Food and Civil Supplies Corporation, Nalanda is that
the petitioner being proprietor of Maa Shanti Agro Industries,
Noorsarai by an agreement for the year 2011-12 was supplied
79966.78 quintal of paddy for the milling against which he had to
deposit 53577.74 quintal of CMR but he deposited only 47426.48
quintal of CMR as such, it was alleged that he have defalcated an

amount of Rs. 1,17,06,648/- as the cost of CMR. A Certificate case No. 23/2013-14 has been instituted against the petitioner for embezzlement of Rs. 1,02,06,048/- on account of less CMR supplied as Rs. 15 lacs has been deposited by the petitioner in the meantime.

It has been submitted by the learned counsel for the petitioner that he is innocent and has been falsely implicated in the aforesaid case being proprietor of Maa Shanti Agro Industries, Noorsarai, Nalanda. He submits that a Certificate case bearing Certificate Case No. 23 of 2013-14 has been instituted against him for recovery of Rs 1, 17, 06,648/- being the lesser amount of CMR rice deposited which had given to him for milling. He submits that against the Certificate case, the petitioner had moved this Court in CWJC No. 10687/2013 which was admitted on 16.05.2014 and an order was passed that no coercive steps be taken if the petitioner deposits fifteen lacs within four weeks which the petitioner deposited. Thereafter, in view of the order dated 22.07.2014 passed in C.W.J.C.No. 13746 of 2013(Sone Valley Rice Mill Vs The State of Bihar and others), the proceedings in Certificate case was quashed, including the notice.

It has been pointed out by the learned counsel for the petitioner that in C.W.J.C. No. 13746 of 2013 in the case of Sone



Valley Rice Mill Vs the State of Bihar & Ors) by an interim order dated 10.02.2014 the rice millers and other millers were permitted to sell the paddy or the milled rice in question and deposit all dues of the Corporation. He submits that the said writ application as also other writs of similar matter has been allowed against which the Corporation preferred Letters Patent Appeal which has been disposed in favour of the Corporation against which he has moved the Apex Court. By an interim order dated 15.07.2016 upon notices being issued, the Apex Court in SLP (2) 17696/2016 has directed that there shall be stay of coercive steps, for recovery of the dues. It has also been submitted by learned counsel for the petitioner that he is ready to deposit the entire dues which is the out come of the final calculation as he has raised objection against the said calculation and he is ready to pay the entire amount in installments after final calculation is made.

However, learned counsel appearing on behalf of the Opposite Party No.2 submits that large number of such matters was heard by this Court and various orders were passed in which Anticipatory /Regular bail was granted to the Millers upon payment of 15-20 % of the alleged embezzled amount. She submits that those matters traveled up to the Apex Court and the matter is still pending in the Apex Court. In one such matter on

29.02.2016, the Supreme Court of India has issued notice and in the meantime, operation of the impugned order has been stayed.

From the rival submissions of the petitioner and the Corporation, it appears that the Corporation had instituted two parallel proceedings, one Certificate and the other Criminal Proceeding against which appeals are pending in the Apex Court. In Certificate proceeding there is an order of the Apex Court dated 15.07.2016 in S.L.P. No. 16909 of 2016 and other analogous cases, one of which is that of the petitioner being S.L.P. No. 17696/2016 in which there is a direction that no coercive steps of recovery of the dues be taken. The second order, which is prior to this order dated 29.02.2016 passed in S.L.P.(Cr) No. 3372 of 2016, in which direction was given by Apex Court that the operation of the impugned order shall remain stayed. This appeal arises out of the order wherein on deposit 15-20 % anticipatory/regular bails were granted. Learned Counsel for the petitioner submits that he is ready to deposit Rs . 20 lacs within six months.

From the perusal of the aforesaid interim orders of the Supreme Court, it is apparent that in Criminal proceedings on 29.02.2016 the order of this Court wherein bail was granted on deposit of 15-20 % of the alleged amount has been stayed and in

the Certificate proceedings on 15.07.2016 the Apex Court has passed interim order that there shall be stay of coercive steps for recovery of dues.

Under such circumstances, on the undertaking of the petitioner to deposit 20 lacs within six months from today, let the above named petitioner, in the event of his arrest or surrender before the learned Court below within a period of eight weeks from today, be released on bail on furnishing bail bond of Rs. 10,000/- (Rs. ten thousand only) with two sureties of the like amount each to the satisfaction of the learned Sub Divisional Judicial Magistrate, Nalanda in connection with Noorsarai P.S.Case No. 125 of 2016, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Nilu Agrawal, J)

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