

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.1320 of 2016

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

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1. Krishna Menan Son of Late Shailendra Kumar, Proprietor
of M/s Ambika Jee Rice Mill resident of village - Sanjholi, P.S.
Sanjholi, District - Rohtas (Sasaram).

.... Petitioner/s

Versus

1. The State of Bihar Through District Magistrate, District-
rohtas At Sasaram.
2. The Managing Director, The Bihar State Food and Civil
Supplies Corporation, Bihar at Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sumeet Kr. Singh, Adv.

For the O.P. No. 2 : Mr. A.N. Rai, Advocate

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 01-04-2016 Heard learned counsel for the petitioner and the
Bihar State Food and Civil Supplies Corporation Limited.

The present application has been filed for quashing
of the order dated 27.06.2015, passed in A.B.P. No. 1078 of
2015, whereby the learned 1ST Additional Sessions Judge,
Rohtas at Sasaram directed the release of the petitioner on
anticipatory bail on deposit of Rs. 60,00,000/- (Rupees Sixty
Lacs) within a period of one month in connection with
Sanjhauli P.S. Case No. 35 of 2015, registered under Sections
406, 420 of the Indian Penal Code.

Paragraph 1 of the present quashing application
and the relevant portion of the prayer portion read as follows:

“That the present application is being

filed for quashing the order dated 27.06.2015 passed in A.B.P. No-1078 of 2015 by the learned 1st Additional Sessions Judge, Rohtas at Sasaram in connection with Sanjhauli P.S. Case No-35 of 2015 registered for the offences under section-406,420 of the Indian Penal Code by which the learned Sessions Judge has been pleased observe that (relevant paragraph) :-

“27.06.15-“Considering the aforesaid facts, it is directed in the event of arrest or surrender in the court below within a month from this order with condition that before surrendering in the lower court in compliance of this order he will deposit Rs.60,00,000/- (Rupees Sixty Lacs), he will be released on furnishing bail bond of Rs. 10,000/- with two sureties of like amount each to the satisfaction of the learned court below,” and the same has been passed without application of judicial mind and without any reason and moreover it is unreasonable condition, thus warrants the interference of this Hon’ble Court.”

“It is, therefore prayed that your Lordships may graciously be please to admit this application, issue notice to the Opposite Parties, call for the records of the case and after hearing the parties be further pleased to set aside the order dated 27.06.2015 passed in A.B.P. No. 1078 of 2015 by the learned Ist Additional Sessions Judge, Rohtas at Sasaram in connection with Sanjhauli P.S. Case No. 35 of 2015.

AND/OR

Pass such other order or orders as your Lordships may deem fit and proper in the facts and circumstances of this case.

AND

During pendency of this application no coercive steps shall be taken against the petitioner in connection with Sanjhauli P.S. Case No. 35 of 2015 pending in the Court of learned S.D.J.M., Dehri, Rohtas at Sasaram.”

The prosecution case, as per the written report of

Sri Dinesh Prasad Singh, District Manager, State Food



Corporation, Rohtas Unit, is to the effect that the petitioner being proprietor of M/s Ambika Ji Rice Mill, Sanjhauli, was supplied 10320 quintals of paddy under an agreement during the procurement years 2011-12 in lieu thereof the petitioner was supposed to supply 67% customed milled rice of the paddy supplied to the tune of 6914 quintals to the BSFC latest by 30.4.2013 but the petitioner supplied only 810 quintals of custom milled rice and failed to supply 6104.40 quintals of processed rice, total valued to the tune of Rs. 1,16,17,466.77/- at the rate of Rs.1903.13 per quintal. The petitioner failed to supply the balance customed milled rice in spite of several reminders and thereby misappropriated 6104.40 quintals of rice worth Rs. 1,16,17,466.77/-. Consequently, Sanjhauli P.S. Case No. 35 of 2015 was registered on 07.04.2015 under Sections 406, 420 of the Indian Penal Code.

The petitioner, apprehending his arrest in the above mentioned case, filed ABP No. 1078 of 2015 with prayer for pre arrest bail before the learned District and Sessions Judge, Rohtas on 22.4.2015.

The learned Sessions Judge, Rohtas at Sasaram, after hearing the counsels for the parties, directed the petitioner to surrender before the learned lower court within one month for being released on bail on deposit of rupees sixty lacs within the aforesaid period. The relevant portion of the order reads as follows:-

“Case diary was called for, but was not made available by the prosecution.

As per Agreement the informant has not complied Clause no.-II of the Agreement by which he was bound to supply paddy grain after receiving the advance Lot of C.M.R. and in this way he had provided opportunity to the accused for aforesaid alleged defalcation. This act shows his connivance in this alleged defalcation and for that police investigation is needed. S.P., Rohtas is advised to proceed with this fact. Let a copy be send to the S.P., Rohtas.

As per F.I.R. Rs.1,16,17,466.77 has been alleged as defalcation amount against this petitioner, so he is directed to deposit Rs.60,00,000/- (Sixty Lacs) to the Department concerned through D.D. and receipt of the same may be filed to this court before surrendering in the Lower Court and rest amount in five equal installment quarterly.

Considering the aforesaid facts, it is directed in the event of arrest or surrender in the court below within a month from this order with condition that before surrendering in the Lower court he will deposit Rs.60,00,000/- (Sixty Lacs), he will be released on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of like amount each to the satisfaction of the learned court below.”

Mr. Sumeet Kumar Singh, learned counsel for the petitioner submits that the condition of deposit of rupees sixty lacs is absolutely onerous and unreasonable. The said order, virtually, has completely negated the liberty of the petitioner as



the petitioner is not in a position to deposit the said amount. The petitioner never volunteered before the learned Sessions Judge to deposit rupees sixty lacs and in support of the contention, the bail petition filed before the learned court below has been brought on record as Annexure 2 to this application. It is further contended that the petitioner is the partner of M/s Ambika Ji Rice Mill, Sanjhauli when there are other partners also of the firm.

Mr. A.N. Rai, learned counsel for the BSFC submits that it is a case of misappropriating public money and with a purpose to secure the public money the court has directed to deposit the above mentioned amount. The entrustment of paddy to the petitioner's firm under an agreement is not in dispute. Mr. Rai has submitted that the petitioner has not controverted the fact that he failed to supply 6104 quintals of customed milled rice worth Rs. 1,16,17,466.77/-, hence direction to deposit less than 50% of the due amount cannot be treated to be a condition onerous and unreasonable. The quashing application does not stipulate any defence of the petitioner against the accusation levelled hence the entire accusation is admitted. It is further submitted that the petitioner has prayed in paragraph no. 1 and prayer portion of the present petition for quashing of the entire order dated 27.6.2015 passed in ABP No. 1078 of 2015 hence he has no objection if the entire order is quashed.

Considering the rival submissions of the parties, the only question which has to be determined is whether the condition for anticipatory bail i.e. deposit of rupees sixty lacs is onerous and unreasonable.

Section 438 (1) Cr.P.C. stipulates the provision for grant of bail to a person apprehending his arrest in a non-bailable offence. Sub-section (2) of Section 438 Cr.P.C. stipulates the condition which can be imposed by the Court of Sessions or the High Court while granting bail to an accused which reads as follows:-

“438(1) Where any person has reason to believe that he may be arrested on accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Sessions for a direction under this section that in the event of such arrest he shall be released on bail; and that Court may, after taking into consideration, inter alia, the following factors, namely:-

- (i) the nature and gravity of the accusation;
- (ii) the antecedents of the applicant including the fact as to whether he has previously undergone imprisonment on conviction by a Court in respect of any cognizable offence;
- (iii) the possibility of the application to flee from justice; and
- (iv) where the accusation has been made with the object of injuring or humiliating the application by having him so arrested,

Either reject the application forthwith or issue an interim order for the grant of anticipatory bail.”

“438(2) When the High Court or the Court of Session makes a direction under sub-section (1), it may include such conditions in such directions in

the light of the facts of the particular case, as it may think fit, including-

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India without the previous permission of the Court;

(iv) such other condition as may be imposed under sub-section (3) of section 437, as if the bail were granted under that section.”

Sub-section (2) of Section 438 Cr.P.C. broadly stipulates four parameters for fixing condition for grant of pre arrest bail, namely, any condition in the light of the facts of the case which the High Court or the court of Sessions thinks fit which includes a condition that the person shall make himself available for interrogation by the police officer as and when required or a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer or a condition that the person shall not leave India

without the previous permission of the Court and such other condition as may be imposed under sub-section (3) of section 437.

Section 437 Cr.P.C. stipulates the grant of bail to an accused who has been arrested or detained without warrant or appears or is brought before a Court other than the High Court or the court of Sessions being suspect of commission of non-bailable offence. Sub-section (3) of section 437 stipulates certain conditions which can be imposed by the Court while releasing that person on bail.

“437(3) When a person accused or suspected of the commission of an offence punishable with imprisonment which may extend to seven years or more or of an offence under Chapter VI, Chapter XVI or Chapter XVII of the Indian Penal Code(45 of 1860) or abetment of, or conspiracy or attempt to commit, any such offence, is released on bail under sub-section (1), the Court may impose any condition which the Court considers necessary-

(a) in order to ensure that such person shall attend in accordance with the conditions of the bond executed under this Chapter, or

(b) in order to ensure that such person shall not commit an offence similar to the offence of which he is accused or of the commission of which he is suspected, or

(c) otherwise in the interests of justice.”



If a person, accused or suspected of the commission of an offence, is granted bail, a condition can be imposed in accordance with the conditions of the bond executed under Chapter VI, XVI or Chapter XVII and that such persons shall not commit an offence similar to the offence of which he is accused, or suspected of the commission of offence alleged. Such person shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the court or to any police officer or tamper with the evidence, and may also be imposed, in the interest of justice, such other conditions as it considers necessary.

The conjoint reading of sub-section (2) of section 438 Cr.P.C. and proviso to sub-section (3)(C) of section 437 stipulates that the court has immense power to put a condition in the interest of justice which includes such conditions and directions as the Court may deem fit and proper in the facts and circumstances of a particular case.

The question of a condition being onerous and unreasonable came for consideration before the Supreme Court in the case of Sumit Mehta Versus State (NCT of Delhi) (2013) 15 Supreme Court Cases 570 where considering the ratio laid down by the Constitution bench in the case of Gurubaksh Singh Sibbia V State of Punjab (1980) 2 SCC 565, Amarjit



Singh V State (NCT of Delhi) (2009) 13 SCC 769, Sk. Ayub V State of M.P. (2004) 13 SCC 457, Glaskasden Grace V Inspector of Police (2009) 12 SCC 769, Ramathal V Inspector of Police (2009) 12 SCC 721 and Sandeep Jain V NCT of Delhi (2000) 2 SCC 66 with regard to imposing condition under Sections 438(2) and 437 (3) has been held that any condition used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Paragraph 15 reads as follows:

“15. That words “any condition” used in the provision should not be regarded as conferring absolute power on a court of law to impose any condition that it chooses to impose. Any condition has to be interpreted as a reasonable condition acceptable in the facts permissible in the circumstance and effective in the pragmatic sense and should not defeat the order of grant of bail. We are of the view that the present facts and circumstances of the case do not warrant such extreme condition to be imposed.”

The Supreme Court, while concluding, held as –
“11. While exercising power under Section 438 of the Code, the court is duty-bound to strike a balance between the individual’s right to personal freedom and the right of investigation of the police. For the same, while granting relief under Section 438(1), appropriate conditions can be imposed under Section 438(2) so as to ensure an uninterrupted investigation. The object of



putting such conditions should be to avoid the possibility of the person hampering the investigation. Thus, any condition, which has no reference to the fairness or propriety of the investigation or trial, cannot be countenanced as permissible under the law. So, the discretion of the court while imposing conditions must be exercised with utmost restraint.

13. We also clarify that while granting anticipatory bail, the courts are expected to consider and keep in mind the nature and gravity of accusation, antecedents of the applicant, namely, about his previous involvement in such offence and the possibility of the applicant to flee from justice. It is also the duty of the court to ascertain whether accusation has been made with the object of injuring or humiliating him by having him so arrested. It is needless to mention that the courts are duty-bound to impose appropriate conditions as provided under sub-section (2) of Section 438 of the Code.”

Hence, in view of the above ratio laid down by the Apex Court, it is not in dispute that the conditions for anticipatory bail cannot be onerous and unreasonable so as to defeat the purpose of grant of bail.

The word ‘onerous’ is defined in The New Lexicon Webster’s Encyclopedic Dictionary as ‘burdensome’ or ‘troublesome’.

Black’s Law Dictionary defines the word ‘onerous’

as 'Excessively burdensome or troublesome; causing hardship, Having or involving obligations that outweigh the advantages'.

Hence, the word 'onerous' is a relative term. A condition in the same set of fact or nature of accusation may be onerous for one but not for the other, it depends upon the status of the person, nature of accusation and financial and other capabilities of the accused. Similar is the case of 'unreasonableness'.

In the present case, the learned Additional Sessions Judge has not examined the financial capabilities of the petitioner to deposit rupees sixty lacs within a period of one month. The claim of BSFC that the petitioner failed to supply 6104.40 quintals of customed milled rice worth Rs. 1,16,17,466.77/- has not been controverted by the petitioner either before the learned Additional Sessions Judge in the petition filed under Section 438 Cr.P.C. or in the present application filed under section 482 before this court. This Court has occasion to go through both the petitions which are barely sketchy. Hence, prima facie, the entrustment of paddy and the consequential financial liability to the extent of rest of the custom milled rice being not supplied are not in dispute. However, it is not in dispute that the petitioner never volunteered to deposit the amount of rupees sixty lacs as there is no such statement in the petition filed before the learned Ist Additional Sessions Judge as the same has been brought on



record as Annexure 2 to the petition. Hence, the learned Ist Additional Sessions Judge of his own directed the petitioner to deposit rupees sixty lacs without examining the merits of the case, financial capabilities of the petitioner and directed for release on anticipatory bail on the sole condition of deposit of rupees sixty lacs within a period of one month. Usually when the learned Sessions Judge or the High Court exercises the power under section 438 Cr.P.C. for giving direction for release of an accused in a non-bailable offence, the grant of bail is decided on the gravity of offence and the defence put forward on behalf of the accused and thereafter the conditions are imposed to strike balance between the liberty of the accused and non interference in the fair investigation but in the present case the bail has been granted on the sole condition of deposit of rupees sixty lacs since the FIR stipulates defalcation of Rs. 1,16,17,466.77/-, hence prima facie, the condition appears unreasonable. The entrustment of paddy to the petitioner's firm in pursuance to an agreement is admitted as gets reflected from paragraph 7 of the petition filed before the learned court below which reads as follows:

“7) THAT, the petitioner has been allotted paddy on the basis of written agreement agreed to and signed by the petitioners and the Corporation of the Informant. The agreement is also attached with F.I.R. Thus it is a case of purely civil nature and if any term and condition is violated by either party it involves a civil

remedy by a competent civil court. No criminal liabilities is made out in the existence of the written agreement and criminal branch of trust is not attracted at all.”

But the petitioner has not disclosed in both the petitions the quantum of customed milled rice supplied by him and the balance quantity remained to be supplied by him.

Since the direction for release of the petitioner on anticipatory bail was made on sole condition of deposit of rupees sixty lacs, only the condition part cannot be struck down hence the whole order has to go and above all, the petitioner has also prayed for setting of the entire order dated 27.6.2015 passed in ABP No. 1078 of 2015 whereby he was directed to be released on anticipatory bail on the condition of deposit of rupees sixty lacs.

The impugned order reflects that learned Additional Sessions Judge has recorded that the case diary has not been made available by the prosecution. This conduct of the prosecution is really unbecoming. It is expected from the Superintendent of Police, Rohtas at Sasaram to get the case diary of Sanjhauli P.S. Case No. 35 of 2015 produced before the learned court below forthwith.

Consequently, the order dated 27.6.2015 passed in ABP No. 1078 of 2015 is set aside. The learned court below is expected to hear the bail application afresh on merits after

going through the case diary and pass appropriate order in accordance with law.

With the aforesaid observation/direction this application stands allowed.

(Dinesh Kumar Singh, J)

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