

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.58075 of 2015

Arising Out of PS.Case No. -155 Year- 2015 Thana -LAHERIASARAI District- DARBHANGA

1. Gaurav Kumar Choudhary son of Divesh Kumar Chaudhary, resident of village- Bishanpur, P.S.- Ashok Paper Mill, District- Darbhanga

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner : Mr. Prem Kumar Jha, Advocate

For the E.O.U. : Mr. V.N.P. Sinha, Sr. Advocate

Mrs. Soni Srivastava, Advocate

For the S.F.C. : Mr. Shailendra Kumar Singh, Advocate

CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

8 19-05-2016

Heard learned counsel for the petitioner, learned Senior counsel for the E.O.U and learned counsel for the S.F.C.

The petitioner is apprehending his arrest in a case under Sections 406, 409 and 420 of the IPC.

It has been submitted on behalf of the petitioner that petitioner is not named in the FIR. The sum and substance of the allegation is against one Divesh Kumar Chaudhary of having defalcated CMR to the extent of Rs. 15,10,91532.65, being the quantified amount of CMR weighing 69770.19 quintals.

The allegation is that the petitioner being the proprietor of the rice mill, namely, M/s Jagdamba Rice Mill, Surahachatti, Darbhanga, in connivance of the sole accused in the FIR, Divesh

Kumar Chaudhary (father of the petitioner), and his attorney holder, Ramrit Thakur, have defalcated the amounts aforementioned causing huge loss to the S.F.C.

It is submitted on behalf of the petitioner that the petitioner has no role to play and his name has been maliciously introduced in the present case, though, the initial allegation was against Divesh Kumar Chaudhary. It is further submitted that the said Divesh Kumar Chaudhary has been extended the privilege of anticipatory bail by this court vide order dated 14.09.2015 passed in Cr. Misc. No. 31117 of 2015 (Annexure-2). By the said order this court extended the privilege of bail to the said accused subject to condition that he would deposit 20% of the alleged defalcated amount within a period of 12 months from the date of the said order. It is, thus, contended on behalf of the petitioner that being the son of the said Divesh Kumar Chaudhary, not initially named in the FIR, and being just a proprietor of the said rice mill, the petitioner be extended the similar privilege.

Another ground urged by learned counsel for the petitioner is that since the arbitration proceedings are still pending and so also the proceedings under Public Demand and Recovery Act, for which the petitioner has also moved this court for interim relief, the prosecution against the present petitioner may be kept in

abeyance so that decision in the aforementioned proceedings may decide the issue.

Learned counsel for the S.F.C. has seriously contested the matter and submitted that the order in reference passed in Cr. Misc. 31117 of 2015 has since travelled to the Hon'ble Apex Court vide Special Leave to Appeal (Crl.)-CRLM No. 3372 of 2016 wherein by order dated 29.02.2016 notices have been issued to the petitioner therein and the order under reference stands stayed. The said order has been marked as Annexure-A to the counter affidavit filed by E.O.U.

Learned senior counsel for the E.O.U. has referred to certain annexures of the counter affidavit filed by E.O.U. which conclusively go to prove that petitioner, Gaurav Kumar Choudhary, son of Divesh Kumar Chaudhary, was in fact the proprietor of M/s Jagdamba Rice Mill, Surahachatti, Darbhanga. Annexure-B is the document which indicates that petitioner was the proprietor and had applied for registration of his rice mill showing himself as the applicant and in his name registration was granted by Small Industry Units of the District Industries Centre, Darbhanga. Another document, which has been marked, is the agreement between the petitioner and Bihar State Food and Civil Supplies Corporation office, Darbhanga. The said agreement also

shows that one Ramrit Thakur, to whom the petitioner had granted power of attorney, had entered into an agreement for supply of CMR on 20.02.2013. All such documents conclusively prove that the petitioner Gaurav Kumar Choudhary was not only the proprietor of the aforementioned firm but also was working behind scene to defalcate the money in the name of his proprietorship firm.

After consideration of all facts and circumstances of the case and on consideration of the arguments advanced by the parties, I am not inclined to extend of privilege of anticipatory bail to the petitioner. This application is, accordingly, rejected.

(Anjana Mishra, J)

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