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HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 660 of 2016

Judgment reserved on : 01.12.2016

Judgment delivered on : 09.12.2016

Dwarika Das Rathi, S/o. Shri Narayan Das Rathi, Aged About 58 Years, Partner - M/s Mohan Rice Mill, Aamaseoni, Vidhan Sabha Road, Raipur, Tahsil & District Raipur, Civil & Revenue District Raipur, Chhattisgarh.

---- Applicant

Versus

State Of Chhattisgarh, Through the Station House Officer, Police Station Vidhan Sabha, Raipur, Chhattisgarh.

---- Respondent

For Applicant	:	Mr. B.P.Sharma, Advocate
For Respondent/State	:	Mr. Prafull N. Bharat, Addl. A.G. with Mr. Anil S.Pandey, Govt. Advocate
For Objector	:	Mr. Akash Pandey, Advocate

Hon'ble Shri Justice Goutam Bhaduri

C.A.V. Judgment

09.12.2016

1. Apprehending arrest in connection with Crime No.123/2016 registered at Police Station- Vidhan Sabha, Raipur (C.G.) for the offence punishable under Section 420 & 409 of Indian Penal Code & 3, 7 of the Essential Commodities Act, the applicant has preferred this application under Section 438 of the Code of Criminal Procedure for grant of anticipatory bail.

2. As per the prosecution case, the applicant who is running a Rice Mill named as Mohan Rice Mill was registered for custom milling with the State. It is alleged that in the year 2013-14, the applicant though has received the government paddy but the same in compared to return the rice to the required percentage, the rice was not deposited in the godown. On an enquiry, it revealed that the applicant has lifted initially 103600 quintal of paddy against which

69412 quintal of paddy was to be deposited, whereas he deposited 55000 quintal of rice and 14412 quintal of rice was not deposited. When it was physically verified, 13200 quintal of rice and 127.50 quintal of rice bran was found in the stock whereas the paddy in the stock was found to be zero. Thereby, 1122 quintal of rice was less. Likewise, in the year 2014-15, the applicant has lifted 1000 quintal of paddy against which 670 quintal of rice was to be deposited but the rice was not available while the premises was inspected; thereby total 1792 quintal of rice was less. Subsequently, the Rice Mill was closed. It was further alleged that the applicant actually was under the agreement to lift the paddy of 106800 quintal against which 102203.71 quintal of paddy was received out of which 68476.49 quintal of rice was deposited, but he actually deposited 54231.36 quintal so under the agreement and actually 14244.93 quintal of rice was not deposited and after set off of the entire security amount, an amount of Rs.2,71,34,937/- was still due from the applicant. Thereby, the applicant has committed the offence under the aforesaid sections of Essential Commodities Act and Criminal Breach of Trust.

3. Learned counsel for the applicant would submit that the lifting of paddy was made under the agreement which was executed between Mohan Rice Mill and Chhattisgarh State Cooperative Marketing Federation. It is contended that the agreement contains the clause that in case of late payment, the State is entitled to take damages. It is stated that according to the agreement itself, the percentage of the rice from 100 quintal comes to 67-68% and the rest would remain as rice brans and as per the terms of the agreement 6.2(ii) the entire transactions was secured by quantifying Rs. 500/- per quintal for lifting and remaining for Rs.1000/- per quintal. It is further submitted that the agreement also

contemplates remuneration and the delivery of paddy is completely secured by the Bank Guarantee and post dated cheques and if there is a delay, the necessary damages are recovered. It is further contended that the agreement also contains an arbitration clause. It is stated that all of a sudden when exparte recovery notice was issued, a writ petition was filed bearing W.P.(C) No.958 of 2015 (Annexure A-2) to challenge the same. In such writ petition, the respondent Chhattisgarh State Cooperative Marketing Federation had given a concession to deposit the rice within further period of four months from 15.06.2015. Therefore, the entire nature of allegations are civil but the State has resorted to arm twisting method for recovery of the dues which is not justified. He therefore submits that the dispute between the parties is purely civil in nature and contractual in character, therefore, no offence is made out and, as such, the applicant may be given the benefit of Section 438 of Cr.P.C.

4. Per contra, learned State counsel and counsel for the objector vehemently opposes the prayer for grant of anticipatory bail. It is submitted that the agreement was executed between the applicant and Chhattisgarh State Cooperative Marketing Federation which was a procurement agency of the State. It is stated that the agreement which was executed was for the custom milling of the rice which was under the Chhattisgarh Rice Procurement (Levy) Order, 2007. It is submitted that while the agreement was entered for the securement of the amount of Rs.1500/- per quintal, Rs.500/- were deposited while for Rs.1000/- per quintal security of per quintal of 1000 cheques were given which were dishonoured. It is further contended that when the raid was conducted at that time the necessary quantity which should have been available according to the percentage i.e. rice as against the paddy procured was not

available in the Mill. Therefore, it amounts to criminal breach of trust under Section 409 of IPC besides under Section 3 & 7 of Essential Commodities Act, as breach of Chhattisgarh Rice Procurement (Levy) Order, 2007 was committed. It is further stated that only because of the civil liability arise, the criminal part of act cannot be ignored that the applicant received the paddy but when the inspection was made, the rice which should have been available as against the paddy lifted was missing in the Mill. He therefore submits that it is not a case where the benefit of Section 438 can be extended to the applicant.

5. Perused the case diary and the documents. It appears that under the agreement, different paddy was lifted for custom milling. The levy means compulsory sale of rice by millers to dealers under the Chhattisgarh Rice Procurement (Levy) Order, 2007. The chain of transaction in between the parties would show that the applicant though has lifted the paddy but failed to deposit the required rice as against its percentage within time. Such shortfall of the rice came to surface when the premises of the applicant were inspected and searched and it was found that as against the quantity of paddy collected, the rice which should have been in the premises of the mill as against the outcome of the paddy after processing was quite less. Therefore, the recovery notices were issued which was subject of challenge in the writ petition and certain time was extended on admission made by the Chhattisgarh State Cooperative Marketing Federation under the writ petition. *Prima facie,* it appears that the litigation in the writ petition were with respect to the recovery notices issued whereas the facts would lead to show that when the premises of the applicant was searched, the quantity of required rice was not available and the applicant had received the paddy for milling which admittedly should have been to

the extent of 67% of rice as against the paddy procured. Such milling were further recovered within a boundary of Chhattisgarh Rice Procurement (Levy) Order, 2007. The rice procurement order is meant to procure adequate quantity of rice for public distribution system and to make available the surplus rice in the State. Taking into such facts when the rice was not available to the required quantity of percentage though the milling was made under a contract, prima facie, it do not absolve the applicant on the ground that only civil liability accrues. Taking into totality of the facts of this case, I am of the opinion that it is not a case where the benefit of Section 438 can be extended to the applicant on the ground that custodial interrogation may not be required.

6. In the result, the bail application filed under Section 438 of Cr.P.C. is dismissed.

Sd/-
(Goutam Bhaduri)
Judge

Ashok

HIGH COURT OF CHHATTISGARH, BILASPUR

MCRCA No. 660 of 2016

Dwarika Das Rathi

---- Applicant

Versus

State Of Chhattisgarh

---- Respondent

Post for pronouncement of the Order/Judgment on this day of December, 2016.

J U D G E

.12.2016