

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**MCRCA No. 924 of 2016**Judgment reserved on : 01.12.2016Judgment delivered on : 09.12.2016

Prahlad Kumar Pandey, S/o. Late Shri D.R. Pandey, Aged About 57 Years,
R/o. Village Panda Paraswani, Tahsil-Arang, District-Raipur, Chhattisgarh.

---- Applicant**Versus**

State Of Chhattisgarh, Through- Police Station - Kharora, District-Raipur,
Chhattisgarh.

---- Respondent

For Applicant	:	Mr. D.K.Gwalre, 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.187/2016 registered at Police Station- Kharora, District Raipur (C.G.) for the offence punishable under Section 409, 420 of Indian Penal Code and Section 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, a report was made by the Food Department that the applicant who runs a Rice Mill namely Dauji Chawal Udyog had not deposited 12012.79 quintal of rice, whereas the paddy was lifted for custom milling; thereby have violated the provisions of Chhattisgarh Rice Procurement (Levy) Order, 2007 and had committed fraud and criminal breach of trust and offence under Section 3 & 7 of the Essential Commodities Act.

3. Learned counsel for the applicant would submit that on 03.12.2013 the applicant entered into an agreement with the Chhattisgarh State Marketing Cooperative Federation for custom milling of rice and was to deposit 67% of the rice and the respective Bank Guarantee of Rs.60 Lakhs was also furnished. The applicant obtained 56768.65 quintal of paddy and was suppose to deposit back 38034.99 quintal of rice but he deposited 23626.60 quintal of rice and balance quantity of 14408.39 quintal of rice was not deposited. Since the time lapsed as such exparte recovery order was passed which was subject of challenge in W.P.(C) No.1002 of 2015 wherein on the submission of the Chhattisgarh State Marketing Cooperative Federation, four months time was allowed to deposit the balance quantity of rice, however, the balance quantity when was taken to the authorities the entire rice was not accepted and only 538.15 quintal was accepted. Subsequently, RRC for Rs. 2,89,88,800/- was issued. It is stated that the entire transaction of the nature is based on the agreement and the agreement also contains a clause that in case the rice is not deposited, the respective damages will be charged and the entire deposit of paddy in the value was secured by the Bank Guarantee and the cheques. Therefore, it will only amount to civil liability and the dispute between the parties purely is civil in nature and contractual in character, consequently, 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 Rs. 1000 separate 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 the averments of applicant that because of the civil liability arises, the criminal part of act cannot be ignored is misconceived since the applicant had 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 controlled within an ambit 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