

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1169 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- MUZAFFARPUR

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1. M/s. Bhardwaj Industries Rice Mill, Begusarai, Through Its Proprietor Mritunjay Kumar Son of Late Ramsagar Singh, R/o Village- Chhatauna, P.O.- Chhatauna P.S.- Newkothi, District- Begusarai.

.... Petitioner/s

Versus

1. State of Bihar Represented Through Chief Secretary, Government of Bihar, Patna.
2. Principal Secretary, Department of food and Civil Supply, Government of Bihar.
3. District Magistrate, Begusarai.
4. The Bihar State Food & Civil Supply Corporation Limited, Khadya Bhawan, Daroga Prasad Rai Path, R-Block, Road No.2, Patna Through its Managing Director
5. The Managing Director, The Bihar State Food & Civil Supply Corporation Limited, Khadya Bhawan, Daroga Prasad Rai Path, R Block, Road No.2, Patna.
6. District Manager, The Bihar State food & Civil Supply Corporation, Muzaffarpur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeet Kumar, Advocate
For the Respondent/s : Mr. Sanjay Kumar Giri, GP-9
Mr. Nikhil Kumar Agarwal, Advocate
Mr. Dipika Sharma, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 22-08-2017

Heard the parties.

2. Petitioner M/s. Bhardwaj Industries Rice Mill, Begusarai, is a rice miller. The petitioner has invoked the writ jurisdiction of this Court through its Proprietor Mritunjay Kumar to quash the notice dated 28.03.2017 issued by the District Manager, Bihar State Food & Civil Supply Ltd., Muzaffarpur (respondent



No.3), calling upon the petitioner to furnish bank guarantee equivalent to the cost of the paddy within a month, failing which his anticipatory bail granted in connection with Kazi Mohammadpur P.S. Case No.154 of 2015 shall stand cancelled. The anticipatory bail was granted by this Court on 27.07.2015 in Cr. Misc. No.28035 of 2015 (Mritunjay Kumar V. The State of Bihar & Ors.) on the condition that the petitioner will deposit 20% of the claimed amount within nine month from the date of furnishing bail bonds vide Annexure-P/5.

3. The aforesaid police case was registered under Sections 409/420/34 of the Indian Penal Code against the petitioner for the alleged act of criminal misappropriation of the cost of rice, which the petitioner-miller was to provide to the Bihar State Food and Civil Supplies Corporation Ltd. after milling the paddy of the corporation.

4. Later on the State of Bihar challenged the order granting anticipatory bail in different cases including to the petitioner in the aforesaid Cr. Misc. Application, before the Hon'ble Apex Court in SLP(Cr.) No.1779 of 2016 and connected SLPs. The Hon'ble Apex Court did not interfere with the grant of anticipatory bail, however, by order dated 28.02.2017 modified the conditions of the bail, which included that the accused in all the F.I.Rs. will ensure that Bank Guarantee, if not furnished, is furnished and if lapsed is renewed within a period of one month from the date of order, failing which the



anticipatory bail/bail granted will stand cancelled. At the time of order aforesaid, the Hon'ble Supreme Court had considered Clause 3 of the agreement between the Bihar State Food and Civil Supplies Corporation Ltd. and the millers, which provided for furnishing of the bank guarantee of the value of the paddy which is taken for milling or for pledging of the immovable property of the value of paddy.

5. The respondent-Bihar State Food and Civil Supplies Corporation Ltd. issued notice vide Memo No.1021 dated 28.03.2017 vide Annexure-P/1 against the petitioner calling upon the petitioner to deposit bank guarantee of rupees fifty-nine lacs twenty three thousand two hundred and thirty-nine (Rs.59,23,239/-), failing which necessary step for cancellation of anticipatory bail would be taken.

6. The petitioner has challenged the aforesaid notice on the ground that the petitioner had already pledged his immovable property at the time of entering into agreement for milling, therefore, additional surety of bank guarantee is onerous and not consistent with the direction of the Hon'ble Apex Court.

7. On the other hand, learned Counsel, appearing on behalf of the Bihar State Food and Civil Supplies Corporation Ltd., submits that the condition of bail was modified by the Hon'ble Apex Court after noticing the provisions of two types of sureties in Clause-3 of the agreement between the parties. Hence, it cannot be argued that



the direction of “furnishing of bank guarantee by the accused” in the order of Hon’ble Supreme Court was not for those who had already pledged immovable property of the value of the paddy.

8. The direction of the Hon’ble Apex Court in the above referred S.L.P., in the matter of furnishing of the bank guarantee of the value of the paddy by the accused, is already there and the respondents are proceeding against the petitioner and others consistent with the direction aforesaid. If the petitioner desires any clarification regarding direction of the Hon’ble Apex Court, this Court is not the proper forum. Accordingly, this criminal writ application stands disposed of as devoid of any merit.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.08.2017
Transmission Date	24.08.2017

