

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 745 of 2017

Arising out of P.S. Case No. - null Year - null Thana - null District – WESTCHAMPARAN
(BETTIAH)

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Vishwanath Kedia, Son of Late Anadi Lal Kedia, resident of Village – Dumwaliya,
P.O. – Narainpur, P.S. – Bagaha, District – West Champaran

.... Petitioner

Versus

1. The State of Bihar
2. The Principal Secretary, Food & Consumer Protection Department, Govt. of Bihar, Patna
3. The Bihar State Food & Civil Supplied Corporation through its Managing Director having his office at R. Block, Road No. 2, Patna
4. The District Manager, Bihar State Food & Civil Supplied Corporation, Bettiah, West Champaran

.... Respondents

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Appearance :

For the Petitioner : Mr. Prasant Sinha, Advocate

For the Res-Corp. : Mr. Nirmal Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 24-07-2017

Heard Mr. Prasant Sinha, learned counsel appearing on behalf of the petitioner and Mr. Nirmal Kumar, learned counsel appearing on behalf of the Bihar State Food & Civil Supplies Corporation.

2. The petitioner is proprietor of M/S Gayatri Rice Mill, Dumwalia, Bagaha-2 within the district of West Champaran.

3. The F.I.R. bearing Bagaha Police Station Case No. 194 of 2016 was registered under Sections 406, 420 and 409 of the Indian Penal Code against the petitioner for alleged act of criminal misappropriation of the cost of rice which petitioner was to provide to the Bihar State Food and Civil Supplies Corporation after milling the



paddy provided for the purpose to the petitioner. Similar F.I.R. was lodged against different defaulters. The petitioner was granted anticipatory bail by this Court vide order dated 07.09.2016 passed in Cr. Misc. No. 35923 of 2016 with direction that the petitioner would deposit 20% of the outstanding dues.

4. Later on, the State of Bihar challenged the order granting anticipatory bail in different cases before the Hon'ble Apex Court in SLA(Cr.) No.1779 of 2016 and connected SLPs. The Hon'ble Apex Court did not interfere with the 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 Supplied 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 no. 4, District Manager, Bihar State Food and Civil Supplies Corporation issued notice vide Memo No. 531 dated 25.03.2017 vide Annexure-10 against the petitioner calling



upon the petitioner to deposit bank guarantee of Rs.52,66,589.95 (Rupees Fifty Two Lakhs Sixty Six Thousand Five Hundred Eight Nine and Ninety-Five Paisa), 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, Mr. Nirmal Kumar, learned counsel appearing on behalf of the Bihar State Food and Civil Supplies Corporation 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 alleged 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)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	26.07.2017
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