

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.853 of 2017

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1. Birendra Singh, S/o Ram Vilash Singh, R/o Vill- Baroondih, P.S.-
Baroon, Dist- Aurangabad Petitioner

Versus

1. The State of Bihar Through Principal Secretary, Food & Civil Supply
Corporation, Govt. of Bihar, Patna
2. The District Magistrate Aurangabad, Dist- Aurangabad
3. The Managing Director, Bihar State Food Civil Supplies Corporation
Limited, Bihar at Patna
4. The District Manager, B.S.F.C. Aurangabad, Dist- Aurangabad
..... Respondents

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Appearance :

For the Petitioner : Mr. Brij Bihari Tiwary, Adv.
For the State : Mr. Upendra Pratap, AC to SC IV
For the BSFC : Mr. Shailendra Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

2 09-08-2017

Heard the learned counsel for the parties.

The petitioner is proprietor of Singh Arwa Rice Mill,
Barun, Aurangabad.

A first information report, bearing Barun P.S. Case No. 51 of 2015, was lodged against the petitioner on the allegation of cheating and defalcation of the money of the Bihar State Food and Civil Supplies Corporation Limited as the petitioner failed to return back the rice of the crushed paddy which was handed over to the petitioner. In the aforesaid case, petitioner was granted provisional anticipatory bail by this Court in Cr. Misc. No. 23986 of 2015 on 06.07.2015 with condition that the petitioner shall deposit twenty per cent of the outstanding dues within a period of nine months and, thereafter, the learned Court below will confirm the provisional anticipatory bail of the petitioner. The petitioner deposited the aforesaid amount and provisional anticipatory bail was confirmed.

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.

The respondent-Bihar State Food and Civil Supplies Corporation Ltd. issued notice vide Memo No.520 dated 12.04.2017 vide Annexure-2 against the petitioner calling upon the petitioner to deposit bank guarantee of rupees Rs.1,27,28,645/- (rupees one crore twenty seven lakh twenty eight thousand six hundred and forty five only), failing which necessary step for cancellation of anticipatory bail would be taken.

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.

On the other hand, Mr. Shailendra Kumar Singh, 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 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.

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.

I.A. No.1384 of 2017, whereby the petitioner has sought for ancillary relief of setting aside Memo No.693, dated 07.06.2017, issued by the Superintendent of Police, Aurangabad, vide Annexure-1 to the interlocutory application, also stands disposed of in view of the result of the writ application aforesaid for the reason that by the aforesaid memo the Superintendent of Police, Aurangabad, has taken appropriate step to get warrant of arrest against the defaulters and directed to produce the warrantees before the Certificate Officer.

(Birendra Kumar, J)

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