

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.25053 of 2017

Arising Out of PS.Case No. -125 Year- 2015 Thana -PIRO District- BHOJPUR

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Bishundeo Rai, Son of Late Bhuti Rai, R/o Village- Manjhiaon (Hasan Bazar), P.S.- Piro, District- Bhojpur.

.... Petitioner/s

Versus

1. The State of Bihar.
2. The District Manager, Bihar State Food Corporation, Bhojpur, Ara.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	: Mr. Naresh Kumar Malhotra, Sr. Advocate
	Mr. Binod Kumar Sinha, Advocate
For the BSFC	: Mr. Harish Kumar, Advocate
For the State	: Mr. Amit Kumar Rakesh, APP

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CORAM: HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

7 07-07-2017 Heard learned counsel for the petitioner,

learned counsel appearing on behalf of opposite party no.2,

the Bihar State Food and Civil Supplies Corporation Ltd.,

Bhojpur at Ara (hereinafter referred to as the

‘Corporation’) and the learned A.P.P. for the State.

Petitioner is languishing in judicial custody since 22.02.2017 in connection with Piro (Hasan Bazar) P.S. Case No. 125 of 2015 registered for the offence punishable under Sections 406, 409 and 420 of the Indian Penal Code and Section 7 of the Essential Commodities Act.

The prosecution case, as lodged by the District



Manager of the Corporation vide Letter No. 578 dated 08.04.2015, is that paddy was given for milling to the millers, but CMR has not been returned. In the case of the petitioner, there is misappropriation of Rs. 1,39,69,507.83.

It has been submitted by the learned counsel for the petitioner that he is innocent, is the proprietor of M/s Gangaji Rice Mill, Hasan Bazar, Piro and the paddy was given by the officials of opposite party no.2 for milling, but they have themselves contravened the provisions of the agreement and as such since he is languishing in judicial custody with effect from 22.02.2017, a sympathetic consideration be taken. He further submits that large number of millers, who had not returned the CMR of the paddy supplied, had moved this Court for regular/ anticipatory bail and coordinate Benches of this Court passed orders to deposit 10/20% of the amount alleged to be defalcated in different cases. Against the said order, State of Bihar had moved the Hon'ble Supreme Court in Special Leave to Appeal (Crl.) No(s). 1779 of 2016 and other cases, which were heard together and disposed of by the Hon'ble Apex Court by order dated 28.02.2017 imposing certain conditions. The relevant part



of the order of the Hon'ble Apex Court imposing conditions is extracted below:

“ (1) The accused in all the FIR(s), will ensure that bank guarantee, if not furnished, is furnished and if lapsed, is renewed within a period of one month from today failing which the anticipatory bail/ bail granted will stand cancelled.

(2) The accused will cooperate with investigation/ trial and their failure to appear, when required, will be a ground for cancellation of anticipatory bail/ bail. An order of cancellation will be passed by the trial court on being satisfied about such failure.

(3) The investigation will be completed within a period of three months.

(4) All the accused will be tried only at five places viz. Patna, Gaya, Chhapra, Darbhanga and Purnia by officers of the appropriate rank determined by the High Court within one week from today. The High Court may specify the area of jurisdiction of the said five courts by



a public order. If required by the High Court, the State Government may sanction extra strength of officers with requisite infrastructure so that normal work of courts is not disturbed on account of the special arrangement for these cases.

(5) The officers posted will deal with these cases exclusively. If free from their work, any other work may be assigned to the said officers.

(6) The concerned authorities will be at liberty to encash the bank guarantee(s) after holding that there is a breach of terms of the agreement which decision will be subject to appropriate remedies of the parties.

(7) If not otherwise encashed, the bank guarantee will be kept alive till the trial is over. However, deposits/ furnishing of bank guarantees will be abide by further orders of the trial court, interim or final.

(8) If any amount is deposited by the accused, the said amount will be adjusted in the amount of the bank guarantee, which is to be furnished by the accused.

(9) The accused will surrender



their passports to the respective courts within a period of four weeks from today and will not leave the country without prior permission from the concerned court.”

It has been submitted by the learned counsel for the petitioner that although no bank guarantee was taken as per clause 3 of the agreement, Annexure-2 between the Corporation and the petitioner's mill, but as per agreement, a land mortgage pledge/ bond was given by the petitioner relating to his property which finds place at clause 2 of the agreement and to substantiate, as directed by this Court, counsel for opposite party no.2 has filed the deed of pledge, Annexure-D stating therein that the landed property pledged with opposite party no.2 has been valued by the Circle Officer by letter No. 35 dated 22.01.2013 and the said date and number has also been incorporated in the deed of agreement at clause 2. He submits that there is a cutting at clause 2 as instead of bank guarantee, land mortgage pledge has been taken by way of guarantee from the petitioner by opposite party no.2. He submits that although Hon'ble Apex Court has imposed the condition



upon the millers to furnish bank guarantee and renew it, if lapsed, the petitioner had already submitted his land mortgage pledge of the equal amount of Rs. two crores and odd to be recovered in case of default and the Hon'ble Apex Court had given a leeway to this Court to pass any further order appropriate in the individual fact and situation of the case or modify the said conditions in the exigencies of situation. Under such circumstances, it is submitted that opposite party no.2 had not taken the bank guarantee instead taken land mortgage pledge, which was equivalent to the amount of the paddy to be recovered from him, hence, the said land mortgage pledge would be an acceptable proposition instead of bank guarantee.

However, learned counsel for opposite party no.2 submits that the petitioner has furnished an undated land mortgage pledge and the valuation has been done by the Circle Officer at the instance of the petitioner and not opposite party no.2, hence, submits that the bank guarantee is essential as per the directions and conditions imposed by the Hon'ble Apex Court, hence, opposes the prayer for bail. Learned A.P.P. for the State also opposes the prayer for bail.



Considering the facts and circumstances and the materials on record, let the petitioner above named be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Rs. Ten thousand only) with two sureties of the like amount each to the satisfaction of the learned Sub-Divisional Judicial Magistrate, Bhojpur at Ara in connection with Piro (Hasan Bazar) P.S. Case No. 125 of 2015.

(Nilu Agrawal, J.)

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