

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 851 of 2017

Arising out of P.S. Case No. - null Year - null Thana - null District - AURANGABAD

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Narendra Kr. Singh, S/o Late Kamlesh Singh, R/o vill. - Baroon, P.S. - Baroon,
Dist. - Aurangabad

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Food & Civil Supply Corporation, Government 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, Advocate

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

For the State : Mr. Upendra Pratap Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 24-07-2017

Heard Mr. Brij Bihari Tiwary, 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 Ltd.

2. The petitioner is proprietor of M/S Shiv Shakti Rice
Mill, Baroon.

3. The F.I.R. bearing Baroon Police Station Case No. 51
of 2015 was registered under Sections 406, 409 and 420/34 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 Ltd. 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 09.07.2015 passed in Cr. Misc. No. 24139 of 2015 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.R(S), 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-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 Rs.50,14,861/- (Rupees Fifty Lakhs Fourteen Thousand Eight Hundred and Sixty One), 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 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.

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
Transmission Date	26.07.2017

