

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45045 of 2018

Arising Out of PS.Case No. -727 Year- 2015 Thana -PHULWARI District- PATNA

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Harsh @ Harsh Kumar, S/o Sri Jitendra Kumar Sinha, R/o Mohalla-
Brahmpur House (D.M. Kothi), Near Police Colony Park, Anishabad, P.S.-
Gardanibagh, District- Patna.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Ajit Kumar

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA
ORAL ORDER

2 13-08-2018 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the Patna Dairy.

The petitioner is in custody since 27.4.2018 in
connection with Phulwari Sharif P. S. Case No. 727 of 2015 for
the offence registered under Sections 420, 406, 467, 468, 470 and
471/34 of the Indian Penal Code.

Learned counsel for the petitioner submits that the
petitioner and his mother had been in continuous business
relationship with the Patna Dairy for over a decade and was the
Transporter-cum-Distributor of the milk from Patna Dairy to
various retail outlets. It is submitted that in the year 2015, certain
cheques and bank guarantees filed by the petitioner are alleged to
have been issued by the petitioner which were not genuine and the



Patna Dairy was unable to encash the same resulting in loss to the Patna Dairy. The further allegation against the petitioner is that the petitioner failed to respond to the notice issued by the Dairy and ultimately in the year 2015, the Patna Dairy has lodged the aforementioned case against the petitioner and as result thereof, the petitioner has been taken into custody. It is further submitted that the entire allegation is false and fabricated and the Patna Dairy which has alleged that the cheques issued by the petitioner had bounced, has not taken any legal recourse in accordance with the provisions of the N.I. Act to prosecute the petitioner but has instead resorted to the filing of the present case resulting in malicious prosecution.

Learned counsel for the petitioner further submits that the entire matter is subject to the arbitration by the Managing Director of the COMFED as per Clause 37 and without taking recourse to the said provision of the agreement, the present case has been lodged. He further submits that the petitioner is willing to save himself to any negotiation and will sit across the table and participate in the accountancy and make good any loss if at all the same has been occasioned. He, thus, prays that the petitioner may be extended the privilege of bail so that he can participate in negotiations with the Managing Director of the COMFED and no



sooner the same is done the issue would be resolved amicably between the parties.

Learned counsel appearing on behalf of the Patna Dairy has seriously contested the matter and has submitted that the petitioner has been afforded enough time to make good the loss which has been occasioned to the Dairy and having failed to do so, the informant was forced to take recourse to law and file the present F.I.R. He, thus, prays that the petitioner may not be extended the privilege of bail.

Having heard learned counsel for the petitioner and learned counsel appearing on behalf of the Patna Dairy and after referring to several annexures which have been filed by the petitioner in the supplementary affidavit which has been filed, it appears that there has been some misunderstanding between the parties as on the date it is alleged that the cheques had bounced there was money in the Bank account of the petitioner as is evident from the Pass Book of the mother of the petitioner presented before this Court which was being operated by the present petitioner. It further appears that in view of the arbitration clause, the authority ought to have taken recourse to the said procedure before filing any criminal prosecution against the petitioner.



Be that as it may in view of the fact that the petitioner has already been in custody for about four months and undertakes that he shall enter into an appropriate negotiations with the Managing Director of COMFED and will sit across the table to ensure that the matter is resolved amicably, let the petitioner, above named, be released on bail on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of Additional Chief Judicial Magistrate-XV, Patna in connection with Phulwari P.S. Case No.727 of 2015, subject to the following conditions :-

(1) One of the bailors will be his own blood relative, preferably, father, mother, brother, sister and/or his wife.

(2) The petitioner shall not indulge himself in any similar offence till conclusion of the trial.

(3) The petitioner shall remain physically present in Court on each and every date during trial and in the event of his failure on two consecutive dates without sufficient reasons his bail bonds shall be liable to be cancelled by the learned Court concerned.

(4) The petitioner shall co-operate with the investigation, if not already concluded, and make himself available as and when so required and in case of failure, the State



shall be at liberty to move for cancellation of bail.

It is further made clear that the petitioner after his release from custody will appear before the Managing Director along with the copy of this order and present all documents necessary for negotiations upon which the Managing Director shall fix a date in which the informant shall be called upon to be present. The Accountancy and calculations shall be conducted under his supervision and the authority namely the Managing Director shall then pass appropriate orders which shall be binding on both the parties. The petitioner shall also see that once such Accounting is made and it is found that he is required to make payment to the Dairy, he shall do so in installment as fixed by the Arbitrator within a period of three months thereafter. It is also made clear that in case, the petitioner does not cooperate in the aforementioned process, liberty shall be available to the Patna Dairy to move this Court for cancellation of this order.

(Anjana Mishra, J)

N.H./- Rajeev

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