

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.14712 of 2018**

Arising Out of PS.Case No. -1190 Year- 2015 Thana -SASARAM NAGAR District- SASARAM  
(ROHTAS)

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Rajeshwar Singh S/o Ram Chova Singh, R/o Village- Nyaya, P.S.- Agrer, District-  
Rohtas.

.... .... Petitioner

Versus

1. The State of Bihar.
2. The District Manager, Bihar State Food and Civil Supplies Corporation Rohtas  
at Sasaram.

.... .... Opposite Parties.

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**Appearance :**

For the Petitioner : Mr. Sumit Kumar, Advocate  
For the State : Mr. Mukeshwar Dayal, APP  
For BSFC : Mr. Niraj Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

ORAL JUDGMENT

**Date: 31-08-2018**

This application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been filed by the petitioner for quashing the order dated 10.04.2017 passed by the learned Sub-divisional Judicial Magistrate, Rohtas at Sasaram in G. R. Case No. 2434 of 2015 and Tr. No. 472 of 2017 arising out of Sasaram P. S. Case No. 1190 of 2015 dated 19.10.2015 registered for the offences punishable under Sections 406, 420 and 409 of the Indian Penal Code by which he has rejected the petition filed under Section 239 of the Code of Criminal Procedure.

2. Allegation against the petitioner, a rice miller, is that



he had misappropriated 994.66 quintals of custom milled rice amounting to Rs.21,54,000.24/- belonging to State Food Corporation.

3. Learned counsel for the petitioner submitted that the learned Magistrate failed to appreciate the facts and law involved in the case. He submitted that there was an agreement between the parties containing arbitration clause. Hence, in case of any dispute between the parties, the dispute ought to have been referred to the arbitrator for adjudication. Even otherwise, since the allegation is of a simple breach of trust, remedy would lie only in a civil proceeding and putting the petitioner on a trial for any criminal offence would be an abuse of the process of the court.

4. *Per contra*, learned counsel appearing for the State submitted that there is no error in the order impugned whereby the application of the petitioner has been rejected by the court below. He submitted that on appraisal of allegations made in the FIR, it would be evident that ingredients of the offences alleged against the petitioner are clearly made out. It is not a case of mere breach of trust rather a multi-crore paddy scam has taken place in the State of Bihar for which more than 1500 FIRs have been instituted against different rice millers. The swindling of public money has taken place in a deep rooted conspiracy in which not only the rice millers



but numerous public servants are involved.

5. I have heard learned counsel for the parties and carefully perused the record.

6. It has rightly been submitted by the learned counsel for the State that it is not an ordinary case of breach of trust as argued by the petitioner. I had an occasion to deal with several other cases of identical nature at different stages in past.

7. A paddy scam was exposed in the State of Bihar and pursuant to orders passed by this Court, the State Government has set up a Special Investigation Team (SIT) to hold investigation in over one thousand cases of alleged defalcation of more than rupees two thousand crore public money between 2011 and 2015.

8. As per agreement, millers were required to deposit 67% of rice in advance to receive paddy for custom milling in food corporation godowns but, in an organized manner, the millers did not do show in connivance with the officials. The scam surfaced in the year 2013-14, after the mill owners, instead of supplying the rice, sold paddy/rice in open market resulting in huge loss to the state exchequer.

9. Since cases of identical nature had been instituted in different police stations of different districts all over the State, the accused persons named therein moved for grant of pre-arrest



bail/bail under Sections 438 and 439 of the CrPC. They were granted pre-arrest bail/bail vide different orders passed by different courts. The State of Bihar/ State Food Corporation, being aggrieved by the orders granting pre-arrest bail/bail to the accused persons filed almost 252 special leave petitions before the Hon'ble Supreme Court. The Hon'ble Supreme Court of India, after hearing the parties, in SLP(Cr.) No. 1779 of 2016 and analogous cases passed a common order dated 28.02.2017 disposing of all 252 cases as under:-

“Heard.

Permission granted.

Delay condoned.

These petitions have been preferred by the State of Bihar/Bihar State Food Civil Supplies Corporation against orders granting anticipatory bail/bail, in connection with cases, the facts of which are identical.

It has been stated by Mr. Siddharth Luthra, learned senior counsel appearing for the State/Corporation, that a sum of Rupees fifteen hundred crores in all has been allegedly misappropriated by the accused for which 600 FIRs have been filed. According to the case of the State, agreements for milling of paddy were entered into with different rice mills in pursuance of which paddy was handed over for milling but



the rice from the milled paddy was not returned or was returned partly. Thus, there is misappropriation to a huge extent. In such circumstances, grant of anticipatory bail/bail will seriously hamper the investigation/trial resulting in huge loss to the State.

Our attention has been drawn to the Deed of Agreement. Clause 3 thereof provides for furnishing of bank guarantee for the value of paddy, which is taken for milling, or for pledging of the immovable property of the value of the paddy. There is also provision in clause 12 that in case of default of terms of agreement the bank guarantee can be forfeited and legal action initiated for recovery of the amount from the mortgaged immovable property.

The High Court has passed an order for deposit of 10 to 20 % of the amount, alleged to be involved in different cases for grant of bail/anticipatory bail.

Since the anticipatory bail/bail was granted more than one year back and financial interest of the State is or can be secured, we are not inclined to cancel the anticipatory bail/bail but modify the order of granting of anticipatory bail/bail conditional adding conditions as follows:

(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.

On compliance of the above order, if any accused is in custody, he will be granted bail in accordance with law.

Any other proceedings between the parties will remain unaffected by this order and the same can proceed in accordance with law.

The trial court/High Court will be at liberty to pass any further order which it considers appropriate, having regard to the individual fact situation or modify the above directions in exigencies of the situation.

The special leave petitions are disposed of accordingly.

Pending applications, if any, shall also stand disposed of.”



10. Thus, it would be manifest that taking into cognizance the gravity of the offence, the Hon'ble Supreme Court not only put certain conditions for allowing the accused persons to continue on bail but also directed that all the paddy scam cases should be investigated within three months and trial should be concluded in next six months. It also directed that five special courts could be set up at five places viz. Patna, Gaya, Chhapra, Darbhanga and Purnia for trial of paddy scam cases. The instant case in which an application under Section 239 of the CrPC for discharge from the case was filed by the petitioner is one of the cases of the paddy scam.

11. Moreover, merely because a civil remedy is available or because there is an arbitration clause in the agreement, a criminal prosecution would not be barred.

12. In **Indian Oil Corporation vs. NEPC India Ltd. [(2006) 6 SCC 736]** and **R. Kalayani vs. Janak C. Mehta [(2009) 1 SCC 516]**, the Supreme Court has held that the nature and scope of civil proceedings is entirely different from the criminal proceedings. The mere fact that the allegation relating to commercial transaction or breach of contract for which civil remedy is available or has been availed is not a ground to quash criminal proceedings.



13. Having said so, I find from the impugned order that after going through the materials available on record including the statements of witnesses recorded under Section 161(3) of the CrPC and, after hearing the parties, the learned Sub-divisional Judicial Magistrate has found sufficient materials to proceed against the petitioner. In that view of the matter, in the opinion of this Court, no ground for interference with the order impugned is made out.

14. Regard being had to the discussions made above, I see no merit in this application. It is dismissed, accordingly.

(Ashwani Kumar Singh, J.)

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