

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.61435 of 2017

Arising Out of PS.Case No. -86 Year- 2017 Thana -GHOGHARDIHA District- MADHUBANI

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Shiv Kishore Kamat @ Shib Kishor Kamat @ Sib Kishore Kamat S/o Late
Khushi Lal Kamat, R/o Village- Alola, P.S.- Ghoghardiha, District-
Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar
2. Sri Mishri Lal Mahto S/O late Sita Ram Mahto, The Co-Operative
Extension Officer, Ghoghardiha, District- Madhubani.
3. The District Manager, State Food Corporation, Madhubani.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Yogendra Kumar

For the Opposite Party/s : Mr. Tarun Prasad Mandal

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

7 25-04-2018

Heard the learned counsel for the petitioner and the

learned APP for the State.

The petitioner seeks anticipatory bail in connection
with Ghoghardiha Case No. 86 of 2017 dated 8.9.2017/ G.R.
No.1349 of 2017 for the offences punishable under Section 406,
419, 420, 120/34 of the Indian Penal Code.

The case of the prosecution, as per the written complaint
dated 2.9.2017 filed by the PACS, Chairman of Brahmpura,
Bathnaha Panchayat, namely, Upendra Narayan Yadav and others,
is that according to the policy decision of the Government of
Bihar, the PACS Chairman had to purchase paddy from the
farmers and had to give the same to the millers of the rice mill and
the rice miller had to return rice @ 67%, which was in turn to be



handed over to the Bihar State Food Corporation. It has been further stated that various PACS Chairman including the informant had taken paddy from various farmers and had given the same to the millers namely Shiv Kishore Kamat i.e. the petitioner herein for the purposes of milling, however, miller returned inadequate quantity of rice to be handed over to the Bihar State Food Corporation and further failed to hand over the remaining quantity of rice, as has been mentioned in the tabulated chart annexed to the complaint. It has also been alleged that the petitioner herein and other accused persons conspired together and have misappropriated huge quantity of rice.

This Court, by an order dated 28.2.2018, had noted the contention of the learned counsel appearing for the petitioner to the effect that during the course of investigation, the PACS Chairman, namely, Upendra Nr. Yadav (informant) has sent a letter dated 17.9.2016 to the Investigating Officer stating that total outstanding CMR i.e.566.48 quintals has already been received by him and now, there is no outstanding CMR as against the petitioner herein. In such view of the matter, the District Manager, State Food Corporation, Madhubani was added as Opposite Party No.3, so that the opposite party no.3 could inform this Court as to whether it has received the entire quantity of CMR or not.



In pursuance to the earlier orders of this Court, the opposite party no.3 i.e. the District Manager, State Food Corporation, Madhubani has filed a counter-affidavit inter alia, stating therein that the instant case i.e. Ghoghadih P.S. Case No. 86 of 2017 has been filed by the PACS Chairman, namely, Upendra Nr. Yadav against the petitioner i.e. the miller and as per the agreement, the PACS Chairman had to purchase paddy and deposit advance CMR before the State Food Corporation, whereafter it has to release paddy to the miller, however, the PACS Chairman has violated the terms and conditions and instead delivered total paddy for milling to the miller. It has been further stated that the PACS Chairman, the informant of the present case, is the main culprit inasmuch as he has failed to deposit total CMR before the State Food Corporation, hence an FIR bearing Ghoghadih P.S. Case No. 231 of 2016 has been lodged against the informant of the present case i.e. the PACS Chairman namely, Upendra Nr. Yadav.

A counter affidavit has also been filed on behalf of the Block Cooperative Extension Officer, Ghoghadih District Madhubani wherein he has stated that in the instant matter an FIR has been lodged against the Chairman of the PACS, namely, Upendra Nr. Yadav apart from initiation of certificate proceeding



against him since he has failed to provide adequate CMR for the year 20015-16 within the stipulated time i.e. on or before 31.4.2016. It has also been stated that the said PACS Chairman has not provided the balance quantity of CMR i.e. 566.48 quintals.

A counter affidavit has also been filed on behalf of the informant i.e. the PACS Chairman, namely, Upendra Nr. Yadav and it has been fairly submitted that the informant had supplied paddy to the miller for the purposes of milling, but the petitioner did not return the complete/ accurate CMR equivalent to paddy for the financial year 2015-16. However, the informant, namely, Upendra Nr. Yadav has failed to show that an agreement was entered into between him and the petitioner for milling of the alleged paddy totaling to 1200 quintals. The fact remains that other informants except Upendra Nr. Yadav, have failed to file any counter affidavit to show that any quantity of CMR is due from the petitioner.

In view of the question formulated by this Court by an order dated 28.2.2018 and the answer given by the District Manager, State Food Corporation of Madhubani (Opposite Party No.2) to the effect that the main culprit is the informant namely, Upendra Nr. Yadav, against whom FIR has been lodged bearing Ghoghadih P.S. Case No. 231 of 2016 and he is the person who



has failed to deposit the balance quantity of CMR with the State Food Corporation, coupled with the fact that the informant, namely, Upendra Nr. Yadav has failed to bring on record any agreement entered into between him or his PACS with the petitioner herein for the purposes of milling the alleged quantity of paddy, in turn whereof 67% of rice was to be returned, I find that prima facie, no case is made out for the offence as alleged by the informant especially so as to impede grant of privilege of anticipatory bail to the petitioner herein.

Having regard to the facts and circumstances of the case and the fact that prima facie, no case is made out against the petitioner herein, I deem it fit and appropriate to admit the petitioner to the privilege of anticipatory bail.

Accordingly, in the event of arrest or surrender before the court below within a period of eight weeks from the date of receipt/production of a copy of this order, the petitioner, above named, is directed to be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/- (Rs. Ten thousand) with two sureties of the like amount each to the satisfaction of learned S.D.J.M., Jhanjharpur, District Madhubani in connection with Ghoghardiha P.S. Case No. 86 of 2017 dated 8.9.2017/ G.R. No. 1349 of 2017,



subject to the conditions as laid down under Section 438(2) of the
Cr. P.C.

(Mohit Kumar Shah, J)

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