

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.78503 of 2018

Arising Out of PS. Case No.-171 Year-2016 Thana- MUFFASIL District- West Champaran

Ashok Kumar Rai, Prop. M/s Bajrang Enterprises, son of Late Gopal Ji Rai,
Resident of Village - Gonauli, Police Station- Bettiah Muffasil, District-West
Champaran.

... .. Petitioner/s

Versus

1. State Of Bihar
2. The Bihar State food and Civil Supply Corporation Limited, Bettiah, West
Champaran.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar No.-7
For the Opposite Party/s	:	Mr. Rajendra Singh Shastriji
For the BSFC	:	Mr. Harish Kumar

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

6 15-02-2019 Heard parties.

Petitioner seeks bail in **Bettiah Muffasil P.S. Case**
No.171 of 2016 registered for the offence punishable under
Sections 409 and 420 of the Indian Penal Code.

Informant is District Manager, Bihar State Food and
Civil Supplies Corporation Ltd. Bettiah, who in his written
complaint dated 30.04.2016 addressed to the Officer-in-charge,
Bettiah (Muffasil) Police Station, West Champaran, has alleged
that Ashok Kumar Rai (petitioner) proprietor M/s. Bajrang
Enterprises in the procurement year 2012-13 had entered into an
agreement with the Informant-corporation with respect to
milling of paddy of 28598.80 Quintal and was to provide 67 per



cent CMR amounting to 19161.19600 Quintal rice by the time 31.12.2013, but he has only deposited 9720.00 Quintal CMR in the godown of FCI and even after repeated warning he has not deposited the remaining rice measuring 9441.19600 Quintal CMR valuing Rs. 20445476.40/- but has paid only Rs. 8 Lacs through bankdraft and remaining amount of Rs. 1,96,45,476.40/- (One Crore Ninety Six Lacs Forty Five Thousand Four Seventy Six and Forty Paise) of public money has been misappropriated and defalcated by him which is recoverable with 18 per cent interest per annum and on the basis of said written complaint FIR was registered against petitioner giving rise to Muffasil P.S. Case No. 171 of 2016 dated 02.05.2016 under Section 409 and 420 of IPC.

Patna High Court had granted anticipatory/regular bail to the accused-millers having such allegation on deposit of 15 per cent or 20 per cent of the defalcated amount, however, Corporation (Informant) being aggrieved by said order approached the Apex court and Apex Court in a batch of cases decided that accused have to provide a bank guarantee of similar value of due amount which could be revoked by the corporation in case of default and accused after furnishing the bank guarantee equal to due amount will be entitled for grant of



bail/anticipatory bail and all those accused who have been granted anticipatory bail/regular bail were required to furnish the bank guarantee of the value of due amount and in case of non-furnishing their bail bonds would be cancelled and they would be taken into custody.

Petitioner was granted provisional anticipatory bail by this court vide order dated 20.12.2016 passed in Criminal Miscellaneous No. 47947 of 2016 as contained in Annexure-1, with a condition that he would deposit 20 per cent of defalcated amount within five months and thereupon provisional anticipatory bail would be confirmed, however, petitioner failed to deposit any amount and he was arrested by the police on 10.07.2018 and is in custody since then.

Apex Court subsequently in **Criminal Appeal No.998 of 2018 @ (Special Leave Petition (CRL.) No.9196 of 2017 and other analogous cases** on modification filed by Rice Millers modified its earlier order dated 28.02.2017 by order dated August 13, 2018. Relevant paragraphs of the aforesaid order read as under:-

a) The expression “Bank Guarantee” used in condition No.1 as stipulated in order dated 28.02.2017 passed by this Court pertains to bank guarantee which the concerned



millers was obliged, in terms of the agreement in question to furnish. The obligation to furnish the bank guarantee and to keep it alive is referable to the terms of the agreement and not to the “defalcated sum” as was submitted by the Corporation.

e. We permit the Corporation to secure its interest either by invoking the bank guarantees wherever furnished AND / OR by putting to auction the unencumbered immovable property pledged by the millers with it, after due process of law.

The petitioner in terms of agreement entered between him and Corporation date 23.02.2013 as per Clause (3) had pledged his immovable property as a security to the Corporation by deed of pledge (Annexure A of counter affidavit) and had also entered into agreement under PDR Act (Annexure B of counter affidavit). The relevant clause of the Agreement Annexure 3 of supplementary affidavit read as follows:-

3. The second party is at liberty to take paddy for milling as much as the quantity he desires during the said procurement season in accordance with his monthly milling capacity but, he has to furnish Bank Guarantee for the value of paddy, which he takes for milling OR in case, he is not capable in the form of mortgage bond for the rest



amount or he can pledge immovable property for the entire value of paddy which he takes for milling. The property details so mortgage must be certified to be in his own name by the competent authorities either by circle office of the block or SDO of the concerned sub-division so that in case of default of second party or any deviation of paddy may be recovered.

The petitioner in terms of agreement had pledged his immovable property duly certified by the Revenue Authorities as contained in Annexure A and also entered in agreement with the Corporation under the PDR Act as contained in Annexure B as such, the interest of Corporation was fully secured and protected in terms of Annexures A and B and Corporation is at liberty to realize the due amount by selling the pledged immovable properties of the petitioner and can also realize through PDR Act.

In the facts and circumstances of the case and for the reasons stated above, let the petitioner named above be released on bail upon furnishing bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of learned Additional District and Sessions Judge IX, Saran, Chapra in



connection with **Bettiah Muffasil P.S. Case No.171 of 2016**,
with following conditions:-

(1) Bailors should be local having sufficient immovable property within the jurisdiction of the court concerned.

(2) Petitioner shall co-operate in the trial and shall be properly represented on each and every date fixed by the court and shall remain physically present as directed by Court and his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the court below.

(3) If the petitioner tampers with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioner.

(S. Kumar, J)

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