

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.26562 of 2016**

**In**  
**CRIMINAL MISCELLANEOUS No.31955 of 2015**

Arising Out of PS. Case No.- Year-1111 Thana- District-

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Arvind Kumar Singh @ Arvind Singh @ Arbind Kumar Singh, Son of Sri Ram Kumar Singh, Resident of Village – Narayanpur, Police Station – Narayanpur in the district of Bhojpur.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Bihar State Food and Civil Supplies Corporation Ltd. Bihar, Patna.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr.Prabhu Narayan Sharma  
For the Opposite Party/s : Mr.Sri Nityanand

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**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**  
**ORAL ORDER**

5      03-07-2019                      Heard Mr. Akhileshwar Prasad Singh, learned Senior  
  
counsel for the petitioner and Mr. Shailendra Kumar Singh,  
  
learned counsel for the BSFC.

The present application has been filed for modification of order dated 06.08.2015 passed in Criminal Miscellaneous No. 31955 of 2015 to the extent of extending the period of provisional bail for further 10 months to deposit the undertaken amount of 20% of the total due amount.

The factual matrix of the case is that the petitioner preferred Criminal Miscellaneous No. 31955 of 2015 in connection with Narainpur P.S. Case No. 23 of 2015 registered for the offences punishable under Sections 406 and 420 of the



Indian Penal Code, pending in the Court of learned Judicial Magistrate, Ist Class, Ara. The petitioner, being the rice miller, was supplied 9954 quintals of paddy by the Bhojpur unit of the Bihar State Food & Civil Supplies Corporation under agreement for the agriculture year 2012-2013 in lieu thereof the petitioner was supposed to supply 6669 quintals of Custom Milled rice (CMR) but the petitioner only supplied 2700 quintals and failed to supply 3969 quintals of Custom Milled Rice worth Rs.85,95,497/-. On the undertaking of the petitioner that he was ready to deposit 20% of the alleged due amount within ten months in five bimonthly installments he was granted provisional anticipatory bail for eleven months vide order dated 06.08.2015 passed in Criminal Miscellaneous No. 31935 of 2015 but the petitioner failed to comply the said undertaking. However, a statement has been made in paragraph 6 of the petition that the petitioner has deposited Rs.1,99,310/- till date. Hence, the present modification application for extending the period of provisional anticipatory bail for further period of ten months.

However, Mr. Shailendra Kumar Singh, learned counsel for the BSFC submits that till date no amount has been deposited by the petitioner.



Considering the rival submission of the parties, this Court is not inclined to modify the order on two grounds, i.e., firstly the period of provisional bail got lapsed on 05.07.2016 whereas the present modification application got registered on 27.06.2016 and above all more than three years have passed since the filing of the present application wherein extension of provisional bail for further ten months has been prayed for but till date the undertaken amount has not been deposited. Secondly, the similar order of grant of anticipatory bail on deposit of 20% of the alleged misappropriated amount was challenged by the State of Bihar in Special Leave to Appeal (Criminal) No. 1779 of 2016 (State of Bihar Vs. Divesh Kumar Chaudhary & Anr.) and other analogous appeals, wherein, the Supreme Court declined to cancel the anticipatory or regular bail granted but modified the orders granting bail in following terms:-

“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 still 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 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 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 guarantee 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.”

Due to non-compliance of furnishing bank guarantee in view of the above quoted order of the Supreme Court, the Chief Judicial Magistrate, cancelled the bail bonds of some of the similarly situated accused and issued warrant of arrest, which was challenged before this Hon’ble Court in Cr. Misc. No. 29168 of 2017 (Ashok Kumar Singh Vs. The State of Bihar and Another) and other analogous cases but the learned Single



Judge, declined to interfere on the ground that it will amount to modify the conditions imposed by the Supreme Court hence, dismissed such applications. The same was challenged before the Supreme Court in Criminal Appeal No. 998 of 2018 (arising out of S.L.P. (Criminal) No. 9196 of 2017 and other analogous S.L.Ps.) (Arvind Tiwary Vs. State of Bihar and others) and other analogous appeals. The Supreme Court vide order dated 13.08.2018 modified its earlier order only to the extent that the accused has to furnish bank guarantee, in terms of the agreement between the Bihar State Food and Civil Supplies Corporation and the Miller and not in terms of the value of the alleged misappropriated paddy. Paragraph 20 reads as follows:-

“20. In the circumstances we direct:

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 miller 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 be “defalcated sum” as was submitted by the Corporation.



b) If on account of failure to submit and to keep it alive in respect of the “defalcated sum”, any benefit of bail/anticipatory bail was withdrawn and orders of non-bailable warrants were issued, such orders stand cancelled and recalled. However the concerned millers ought to have furnished and kept alive bank guarantees as contemplated in terms of the agreement. If there be any failure on this count the cancellation of bail/anticipatory bail was perfectly justified.

c) The order dated 28.02.2017 passed by this Court would apply to every single case, irrespective whether the concerned miller was a party to the proceedings before this Court or not.

d) If any miller, in terms of the order dated 28.02.2017, had not furnished bank guarantee or had not kept it alive in terms of his obligations under the agreement, the facility of bail/anticipatory bail would not be available to him. The orders cancelling such facility stand confirmed and the challenge in that behalf is negated. All such millers shall be immediately taken in custody by the



concerned Police.

e) We permit the Corporation to secure its interest either by invoking the bank guarantees whether furnished and or by putting to auction the unencumbered immovable property pledged by the millers with it, after due process of law.”

In view of the discussion made above, every accused has to furnish bank guarantee in terms of respective agreement, this Court is not inclined to interfere, as such the modification application is dismissed, however, if the petitioner surrenders and furnishes the bank guarantee, in terms of the order of the Supreme Court, the learned Court below will be at liberty to consider the prayer for bail.

**(Dinesh Kumar Singh, J)**

DKS/-

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