

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41090 of 2019

Arising Out of PS. Case No.-72 Year-2019 Thana- GAMAHARIYA District- Madhepura

Subhash Kumar @ Subhash Kumar Yadav Son of Late Mahendra Prasad
Yadav Resident of Village-Chiknotwa, P.S.-Ghailarh, District-Madhepura.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s :	Mr. Sandeep Kumar, Advocate Mr. Chandra Mohan Jha, Advocate
For the Opposite Party/s :	Mr. Nityanand, APP
For Mining Department :	Mr. Naresh Dikshit, Advocate Mr. Brij Bhim Tiwari, Advocate
For Pollution Control Board:	Mr. Shivendra Kishore, Senior Advocate Mr. Parijat Saurav, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL ORDER

5 18-07-2019 Heard learned counsel for the parties.

The petitioner apprehends his arrest in connection with Gamharia P.S. Case No. 72 of 2019 registered under Section 420 of the Indian Penal Code, Sections 4 and 33 of BMMC Rules, 1972, Sections 3 and 4 of Bihar Mineral Rules 2003, Section 15 of the Environment (Protection) Act, 1986 and Section 40 of BMMC Rules, 1972.

The allegation against the petitioner is that the Mining Officer, Madhepura, upon information, checked the brick kiln of the petitioner situated under the Gamharia, P.S., which was running without obtaining any license and without depositing revenue of mining. It has further been alleged that no objection



certificate from Mining, Environment and Pollution was not obtained by the petitioner before running the brick kiln and consent order from the Bihar State Pollution Control Board was also not obtained by the petitioner.

Learned counsel for the petitioner submits that petitioner is innocent and he had applied for obtaining license before Mining Department and had deposited the money and second years also reapplied for obtaining license, but license has not been issued.

Learned senior counsel, Mr. Shivendra Kishore, appearing for the Bihar State Pollution Control Board and Mr. Brij Bhim Tiwari, learned counsel, appearing for Mining Department, submits that in a Public Interest Litigation, an order has been passed that in any circumstances, the brick kiln shall not be allowed to run without any valid license and without taking consent order from the Pollution Control Board. Learned senior counsel further placed an order dated 06.05.2016, passed by the National Green Tribunal, Eastern Zone Bench, Kolkata and submits that Green Tribunal has categorize the brick kiln in two categories i.e. category 'C' and 'D' and the petitioner's brick kiln comes under category 'D' inasmuch as the brick kiln, which was running without consent order to operate from the



very inception and for which a compensation has been fixed by the National Green Tribunal to the tune of Rs. 1,50,000/-.

After having heard learned counsel for the parties and taking into consideration the fact that the petitioner has offered to deposit compensation and is ready to deposit Rs. 1,50,000/- in three equal installment, which will start from 01st August, 2019 and the same will be deposited before the Member Secretary, Pollution Control Board by way of bank draft, I am inclined to grant anticipatory bail to the petitioner with the condition that before surrender, first installment of Rs. 50,000/- shall be deposited by the petitioner before the concerned Authority and further two installment shall be paid in subsequent two months and the receipt of the same, issued by the concerned Authority shall be presented before the Court below at the time of surrender.

This application is, accordingly, allowed.

Let the petitioner, abovenamed, in the event of arrest or surrender before the court below within a period of four weeks from today, be released on bail upon furnishing bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of the learned Additional Chief Judicial Magistrate-IV, Madhepura in connection with Gamharia P.S. Case No.72 of



2019; subject to condition as laid down under Section 438(2) of
the Code of Criminal Procedure.

(Anil Kumar Sinha, J)

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