

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49207 of 2019

Arising Out of PS. Case No.-258 Year-2017 Thana- BIHIA District- Bhojpur

JITENDRA SINGH Son of Late Rajendra Singh Resident of Village - Baruna,
P.S.- Behea, District- Bhojpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Yogesh Chandra Verma, Sr. Advocate
For the Opposite Party/s : Mr.Shailendra Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

4 09-08-2019 Heard learned counsel for the petitioner and learned
learned Additional Public Prosecutor for the State.

The petitioner is in custody in connection with Behea
P.S. Case No. 258 of 2017 for the offenses under Sections 406,
420 of the Indian Penal Code and Section 7 of the Essential
Commodities Act.

The allegation against this petitioner is that during
the year 2016-17, Rs. 45,00,000/- was given to OSAI PACS to
purchase paddy and prepare CMR (rice), who purchased 3017-
90 quintal paddy from which 2021-993 quintals of CMR would
be prepared but on enquiry neither paddy nor CMR was found
either in his godown or the rice mill and as such there is
defalcation of Rs. 44,81,581/-.

Learned counsel for the petitioner submits that



petitioner is Chairman and is not exclusively responsible for the liability of the PACS. The other members and office bearers are also responsible and as such the petitioner deserves grant of bail.

Learned counsel for the Bihar State Food and Civil Supplies Corporation has placed reliance on a decision of the Apex Court in the case of State of Bihar Vs. Devesh Kumar Choudhary & anr. (Special Leave to Appeal (Crl.) No. 1779 of 2016. The relevant part of the order of the Apex Court is quoted below:-

- (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.

The aforesaid judgment was rendered in the peculiar facts of the case. The Supreme Court has noted the siphoning of Rupees fifteen hundred crores and filing of 600 FIRs. Earlier on deposit of 10% to 20% of the defalcated amount bails/anticipatory bails were used to be granted by the High Court. The Apex Court has modified the condition for grant of bail. The Apex Court has imposed the conditions as indicated in the above quoted paragraphs of the order. The Apex Court has granted liberty to the trial as well as High Court to pass any further order which would be considered necessary and modify the above direction in exigency of the situation.

Considering the liberty granted by the Apex Court and the fact that the petitioner is Chairman of PACS and the liability is of the PACS, the Court is of the view that the petitioner deserves bail on furnishing Bank Guarantee of 50% of the defalcated amount. Let the petitioner, above named, be enlarged on bail on furnishing bail bond of Rs. 25,000/-(Twenty-five Thousand) with two sureties of the like amount each to the satisfaction of



the Sub-Divisional Judicial Magistrate, Bhojpur, Ara in connection with Behea P.S. Case No. 258 of 2017 subject to the condition that in addition to the aforesaid sureties, the petitioner shall furnish bank guarantee of 50% of the defalcated amount.

(Anil Kumar Upadhyay, J)

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