

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4661 of 2019

Arising Out of PS. Case No.-224 Year-2015 Thana- KHAGARIA District- Khagaria

Binod Kumar, son of Ramdeo Singh, resident of Mohalla- Bidyadhar, Police Station, Khagaria, District, Khagaria, Owner of M/s Koshi Krishak Rice Mill, Dan Nagar, Khagaria

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Manager, Bihar State Food and Civil Supplies Corporation Limited, Khagaria.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Viveka Nandsingh
For the Opposite Party/s : Mr. Parmeshwar Mehta

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

6 29-03-2019 Heard learned counsel for the parties.

Petitioner seeks bail in G.R. No.927/2015 arising out of Khagaria P.S. Case No.224/2015 registered for the offence punishable under Sections 406, 420 of the Indian Penal Code.

Petitioner had earlier moved for grant of anticipatory bail in Cr. Misc. No.26884/2015 and by order dated 02.07.2015, he was granted anticipatory bail with some conditions. Petitioner again filed application for grant of regular bail in Cr. Misc. No.52168 of 2015 and vide order dated 16.12.2015, he was granted provisional bail for five months with certain conditions.

Written complaint was instituted by the District



Manager, State Food Corporation, Khagaria that the rice mill of petitioner in the Procurement year 2012-13, 2374 quintals of paddy was supplied for milling and petitioner was supposed to supply 1590-60 quintals of C.M.R. rice in the depot of Food Corporation of India but only 270 quintals of rice was supplied by him and 1320-60 quintals of rice remained with petitioner and, as such, an amount of Rs.28,59,838/- remained due against petitioner and on the basis of said written complaint, Khagaria P.S. Case No.224/2015 dated 08.04.2015 under Sections 406 and 420 of the Indian Penal Code was instituted against proprietor of the rice mill, Binod Kumar who is petitioner.

It has been submitted that vide order dated 02.07.2015, petitioner was granted anticipatory bail in Cr. Misc. No.26884 of 2015 with certain conditions that he has to deposit 25% of the due amount along with his bail bond but same was never deposited by petitioner, nor he furnished the bail bond. Petitioner was arrested on 11.10.2015 and filed an application for regular bail in Cr. Misc. No.52168 of 2015 and he was granted provisional bail for a period of five months with a condition that he will produce receipt showing deposit of 10% of due amount before expiry of provisional bail and accordingly, petitioner deposited 10% of the due amount, i.e., Rs.2,86,000/-



with his bail bond and same was accepted by the court below on 23.12.2015 and provisional bail bond was allowed for five months. Petitioner, thereafter, filed Cr. Misc. No.23527 of 2016 for modification of the order dated 16.12.2015 for extension of time for depositing second instalment of 10% of due amount and vide order dated 25.05.2016, provisional bail was extended to 7 months.

The informant, Bihar State Food and Civil Supplies Corporation Limited, Khagaria went to the Apex Court against granting anticipatory bail/regular Bail to accused on deposit of 10%-20% of defalcated amount and after hearing the parties, the Apex Court passed an order by which accused were required to furnish bank guarantee to the tune of defalcated amount in order to grant bail or anticipatory bail in terms of agreement entered between the parties, however, the Apex Court subsequently modified the order that if immovable properties having clear title of petitioner have been mortgaged/pledged with the Corporation which is equivalent to defalcated amount on certified by the Revenue Officer Corporation was permitted to realise the due amount by attachment and sale of the mortgaged/pledged property.

A supplementary affidavit has been filed on behalf of



the petitioner in which deed of agreement between the parties dated 22.03.2013 and pledged immovable property have been annexed as Annexure 3A and 3B in which as per Clause 12 of the agreement, in case of default on part of the second party, bank guarantee submitted by the second party will be forfeited by the first party and recovery of the amount can be realized from the mortgaged immovable property by way of attachment and sale.

Petitioner is in custody since 30.09.2018. Apex Court 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 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 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.

In the aforesaid facts and circumstances of the case, petitioner may approach the trial Court for grant of regular bail if he satisfies the conditions as laid down by the Apex Court and the trial court shall consider the same in terms of the order passed by the Apex Court.

Accordingly, criminal miscellaneous petition stands disposed of.

(S. Kumar, J)

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