

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL REVISION No.483 of 2018

Arising Out of PS. Case No.-92 Year-2015 Thana- PAHARPUR District- East Champaran

Subhash Kumar S/o Laxmi Prasad, R/o Vill.- Nonia Mahto Tola, P.S.-
Paharpur, District- East Champaran. Petitioner

Versus

1. The State of Bihar
2. The Bihar State Food Corporation through its District Manager, Motihari.

... .. Respondents

Appearance :

For the Petitioners	:	Mr. M. K. Upadhyay, Adocate
For the Respondents	:	Mr. Md. Ashlam Ansari, APP
For the BSFC	:	Mr. Harish Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

9 14-02-2020 Heard learned counsel for the petitioner as well as
learned counsel representing Bihar State Food and Civil Supplies
Corporation and learned counsel for the State. Delay Condoned.

Petitioner in this case is aggrieved by and dissatisfied
with the cancellation of his bail bond vide order dated
22.09.2017 passed by learned Chief Judicial Magistrate, East
Champaran, Motihari in Paharpur P.S. Case No. 92 of 2015.

It is not in dispute that earlier the petitioner was
granted anticipatory bail by this Court in Cr. Misc. Case No.
30552 of 2015 subject to a deposit of 20% of the amount lying
due against him within seven months from the date of his
release. The said amount has been deposited by the petitioner
and, therefore, he was on bail. The impugned order dated



22.09.2017 has been passed by taking note of the request of the investigating officer stating that the accused-petitioner has not furnished the Bank Guarantee as per the direction of the Hon'ble Apex Court and he is also not cooperating with the investigation. Reference in this regard has been made to the order dated 28.02.2017 passed by the Hon'ble Apex Court in SLP(Crl) no. 1779 of 2016. On receipt of this request from the investigating officer, the learned Chief Judicial Magistrate passed the impugned order cancelling the bail bond. Admittedly, no notice was given to the petitioner prior to the cancellation of bail bond taking that the case of the petitioner is covered under the order of the Hon'ble Apex Court passed on 28.02.2017.

In course of argument, Mr. Harish Kumar, learned counsel representing the Bihar State Food and Civil Supplies Corporation (hereinafter referred to as the 'Corporation') as well as learned counsel for the State have accepted before this court that the order dated 28.02.2017 passed by the Hon'ble Apex Court applies to those cases in which under clause '3' of the agreement, the Miller was obliged to furnish a Bank Guarantee to the extent of the value of the paddy received by him for milling purposes. In fact, Mr. Harish Kumar has brought to the notice of this Court the further orders passed by the Hon'ble



Apex Court on 13.08.2018 contained in Annexure 'B' and the order dated 25.10.2019 contained in Annexure 'C' and 'C/1' to the counter affidavit. It has been submitted before this Court that in the order as contained in Annexure 'B', the previous order has been clarified.

Paragraph '20' of the said order has been referred to which this Court is reproducing hearinbelow:

"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 the "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 28.02.1017 passed by this Court would apply to every singly 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 wherever furnished and or by putting to auction the unencumbered immovable property pledged by the millers with it, after due process of law.”

Further attention of this Court has been drawn towards the order as contained in Annexure ‘C’ passed by the Hon’ble Apex Court and it has been submitted that the said order has been passed on an application filed on behalf of the State of Bihar seeking modification of the order as contained in Annexure ‘B’. The State of Bihar has sought modification of the order dated 13.08.2018 to the extent that so far as the agreement relating to procurement year 2011-12 is concerned, the accused mill owners may be directed to furnish Bank Guarantee with respect to defalcated amount and further modification has been sought that the mill owners must provide only Bank Guarantee in terms of the agreement relating to the procurement year 2012-13 and 2013-14 and not the deed of pledge with respect to



immovable property.

In this case, the Court is concerned with the agreement relating to the procurement year 2011-12 in which admittedly the agreement does not contain any clause obliging the miller to furnish the Bank Guarantee.

Mr. Harish Kumar has pointed out that in terms of the agreement the miller had to submit the security amount of Rs.50,000/- only.

This Court has been informed that the matter is pending before the Hon'ble Apex Court presently and the prayer of the State is under consideration. This has been treated to be a case of third category and the State has been directed to submit complete details of the individuals concerned so that the notices may be issued to the concerned parties/individuals.

Learned Counsel for the petitioner has submitted that the petitioner would participate in the on-going proceeding before the Hon'ble Apex Court but one thing is very clear from the materials available on the record that at the time of cancellation of the bail bond of the petitioner, had the petitioner been given an opportunity to demonstrate that his case would not be covered by the order of the Hon'ble Apex Court, he would have demonstrated before the Learned Chief Judicial



Magistrate as to why his bail bond should not be cancelled.

Mr. Harish Kumar, learned counsel for the Corporation has in course of argument accepted, in fact, before this Court that the case of the petitioner being in the third category, the learned Chief Judicial Magistrate seems to have proceeded to pass the cancellation order taking as if his case falls in the category of those persons who were obliged under clause '3' of the agreement to furnish the Bank Guarantee but had failed to do so in terms of the order of the Hon'ble Apex Court and to that extent it seems that the order has been passed on a completely wrong notion.

Considering the facts and circumstances of the case and the accepted position as has emerged in course of argument and there being no other material brought before this Court to take any other view, this Court is of the considered opinion that the impugned order is liable to be set-aside and the same is hereby set-aside.

The learned Chief Judicial Magistrate shall now give an opportunity to show cause to the petitioner as there is also an allegation that he is not cooperating with the investigation and then after hearing him can pass an appropriate order thereon.

Learned counsel for the petitioner has submitted that



because now he is likely to get notice in view of the order of the Hon’ble Apex Court as contained in Annexure ‘C’ it is obvious that he would be abiding by the order of the Hon’ble Apex Court.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

avin/Sushma2-

U		T	
---	--	---	--

