

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37171 of 2020

Arising Out of PS. Case No.-45 Year-2016 Thana- SIDHWALIYA District- Gopalganj

Swapan Dutta Gupta @ Sapan Dutta Gupta, aged about 69 years, Male, son of late Durga Mohan Dutta Gupta, resident of Block-ED/7, 193 Andul Road, P.S.- Daner Sekh Lane, District- Howrah-700009 (West Bengal)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Abhay Shankar Singh, Advocate
For the State	:	None
For the Informant	:	Mr. Ashish Giri, Advocate

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 08-07-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Abhay Shankar Singh, learned counsel for the petitioner and Mr. Ashish Giri, learned counsel for the informant. Nobody appeared on behalf of the State when the matter was taken up despite repeated calls.

3. The petitioner apprehends arrest in connection with Sidhwalia PS Case No. 45 of 2016 dated 09.06.2016, instituted under Sections 420, 406, 409, 467, 468, 471 of the Indian Penal Code.

4. The petitioner is accused amongst others and the allegation against him specifically is that he being the Lab In-charge of Bharat Sugar Mills (Sidhwalia) had fabricated the



report with regard to the unit's production and crushing data due to which shortage of more than rupees twenty-two crores has surfaced during audit.

5. Learned counsel for the petitioner submitted that he was the Lab In-charge at the unit and because of his efficiency, he was retained in service even after superannuation. It was submitted that his only duty was to analyze the juice and nothing beyond that. It was contended that the petitioner was only responsible for analyzing the juice and calculating the recovery on day-to-day basis and was not involved in the overall stock position. Learned counsel submitted that even the so-called fabrication and manipulation of the report is concerned, the same was at the behest of Mr. Bishnu Kumar Sureka, who was the Executive President of the Mill and also the appointing authority of the petitioner and because of his terms of employment, the petitioner was bound to comply with whatever direction came from him. It was further submitted that the petitioner is a resident of West Bengal and has no connection with any wrong doing being a technical person. Learned counsel submitted that Bishnu Kumar Sureka and Harendra Nath Singh have been granted bail though against them the allegation is of much higher nature, whereas, Deo Chandra Jha, who was the



Sales Manager of the Mill, has been granted anticipatory bail by a coordinate Bench by order dated 22.02.2021 passed in Cr. Misc. No. 32946 of 2020. It was contended that even as per the FIR, out of seven accused, the name of the petitioner is at the bottom and Bishnu Kumar Sureka is the main accused. Learned counsel submitted that the petitioner is advanced in age being 69 years old and has no criminal antecedent.

6. In absence of learned Additional Public Prosecutor (APP), the Court has heard only learned counsel for the informant. He submitted that the petitioner was a key player in the entire fraud since he was the person from whom the record of the complete production data was initiated and he cannot take the plea that what he had shown was as per the direction of Bishnu Kumar Sureka, for the reason that for doing an illegal act, the plea of direction from the superior authority/boss is no defence. It was submitted that even in this regard there are no written orders to substantiate such claim. Learned counsel submitted that Bishnu Kumar Sureka and Harendra Nath Singh have been granted bail after spending more than six months in custody and the case of the petitioner is, if not not worse then at least similar to Harendra Nath Singh, as both had one of the duties of keeping data of production. Learned counsel submitted



that as far as Deo Chandra Jha is concerned, it has been written that he being the Sales Manager, he was basically responsible for the overall management and, thus, technically, for the sake of argument, it can be contended that he was not supposed to actually go and verify the exact ground position, but in the case of the petitioner as also that of Harendra Nath Singh, they were the persons, who, knowingly, actually gave wrong report leading to such huge financial irregularity being detected in the audit.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to grant pre-arrest bail to the petitioner.

8. Accordingly, the petition stands dismissed.

9. However, in view of submission of learned counsel for the petitioner, if the petitioner appears before the Court below and prays for bail, the same shall be considered, on its own merits, in accordance with law, without being prejudiced by the present order, preferably, on the same day keeping in mind the age of the petitioner.

(Ahsanuddin Amanullah, J)

J. Alam/-

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