

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79806 of 2019

Arising Out of PS. Case No.-217 Year-2017 Thana- BANKA District- Banka

ASHUTOSH KUMAR, Son of Sri Prabhash Gosh Resident of Bhagat Singh Colony, Ward No. 24, Nandlal Mishra Lane, Surkhikal, P.S.- Barari, District- Bhagalpur

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. The District Manager Bihar State Food and Civil Supplies Corporation Limited, Banka Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Indrajeet Jha
For the Opposite Party/s	:	Mr. Parmeshwar Mehta
For the BSFC	:	Mr. Shailendra Kumar

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

9 13-09-2021 Heard Mr. Ranjan Kumar Jha, learned advocate for the petitioner and Mr. Shailendra Kumar Singh, learned counsel for the BSFC. The State is represented by Mr. Parmeshwar Mehta, learned APP.

The petitioner seeks bail in anticipation of his arrest in connection with Banka P. S. Case No. 217 of 2017, dated 21.04.2017, corresponding to G. R. No. 962 of 2017, instituted for the offences under Sections 420 and 409 of the Indian Penal Code.

It appears from the F.I.R. that the petitioner



and one Bahmeshwar Prasad, who was the then Block Cooperative Extension Officer are alleged to have purchased 86,411.88 quintals of paddy from the Paddy Purchase Centre but released only 66,901.75 quintals of paddy to miller for CMR. The balance quantity of paddy was found to be short in the stock.

It has been submitted on behalf of the BSFC that no satisfactory reply could be provided for such shortage in the stock and despite notice by the concerned District Magistrate for deposit of money in lieu of the short quantity of paddy, nothing was done.

Hence, the prosecution.

The learned advocate for the petitioner has submitted that though he has been named in the F.I.R. as Block Agriculture Coordinator but as a matter of fact, he was only the subject matter specialist (SMS) who was entrusted by the District Supply Officer, Banka for inspecting the quality of the purchased paddy in his capacity as SMS. Thus, he rendered his services as an



expert to test the quality of paddy procured for the purposes of milling.

So far as the storage, sale or auction of such paddy is concerned, no mandate was with him for the same.

It has further been submitted that the notice for returning the balance quantity or its equivalent money was never addressed to the petitioner and he never received the same.

It has also been submitted on behalf of the petitioner that he had been discharging his official duty as SMS but later his services were terminated as his employment was only for a fixed tenure.

Apart from this, it has been submitted that the other co-accused person, namely, Bahmeshwar Prasad, who was actually responsible for the purchase and sale of the paddy, has been granted anticipatory bail by a Bench of this Court *vide* order dated 17.02.2018, passed in Cr. Misc. No. 1670 of 2018.



As opposed to the aforesaid contentions, the learned counsel for the BSFC has submitted that the petitioner, at the relevant time, was deputed in the godown at Banka as Block Agriculture Coordinator and was assisting aforesaid Bahmeshwar Prasad, who was Block Extension Officer, in procurement of paddy and then sending the same to the Miller for CMR and therefore he is also responsible for the alleged misconduct.

He further submits that the petitioner may have been terminated from service as the employment was only for a fixed tenure but for the shortage for which the case has been lodged, the petitioner had participated in such purchase along with co-accused Bahmeshwar Prasad in his capacity as Block Agriculture Coordinator, notwithstanding the fact that his employment with the government was only as a SMS.

He further submits that when anticipatory bail was granted to Mr. Bahmeshwar Prasad, another co-



accused, there was no appearance on behalf of BSFC and therefore all the facts could not be placed before the concerned Court.

Considering the rival submissions of the parties and taking into account that the purchase is reckonable for the financial year 2012-2013 and that one of the accused persons of this case has been granted anticipatory bail, this Court deems it appropriate to grant anticipatory bail to the petitioner also but with a caveat.

The petitioner, above-named, is directed to be released on bail, in the event of his arrest or surrender before the court below within a period of eight weeks from the date of receipt / production of a copy of this order, on his furnishing bail bonds in the sum of Rs. 10,000 /- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Banka, in connection with Banka P. S. Case No. 217 of 2017, subject to the conditions as laid down under Section 438 (2) Cr.P.C.



In case the investigation of this case is still pending, the petitioner shall participate in the same. If this case goes to trial, the petitioner would be under an obligation to participate in the trial. Any effort on the part of the petitioner to either delay the process of investigation or the trial would render his bail liable to be cancelled. In that event, the BSFC would be perfectly justified to file necessary application for cancellation of bail of the petitioner.

The petition stands disposed off accordingly.

(Ashutosh Kumar, J)

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