

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76076 of 2019

Arising Out of PS. Case No.-173 Year-2019 Thana- TRIVENIGANJ District- Supaul

Sanjay Kumar Son of Sri Jaiprakash Yadav Resident of Village - Saraigarh
Bhaptiyahi, P.S.- Kishanpur, District- Supaul

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner	:	Mr. A.K. Thakur, Adv. Mr. Nilesh Kumar, Adv.
For the State	:	Mr. Abhay Kumar, APP
For the Informant	:	Mr. Y. V. Giri, Sr. Adv.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

12 17-11-2021 Heard Mr. A.K. Thakur, learned counsel for the
petitioner, Mr. Abhay Kumar, learned counsel for the State and
Mr. Y.V. Giri, learned senior counsel for the informant.

2. The petitioner seeks bail in connection with
Triveniganj P.S. Case No. 173 of 2019 dated 17.06.2019
registered under Sections 406, 409 and 420 of the Indian Penal
Code.

3. As per prosecution case, the petitioner is said to
have embezzled more than Rs.3,12,09,313/- of BISCOMAUN
by not depositing the sale proceed of the fertilizer sold to the
farmers. He had also given an undertaking to remit the said
amount to the authority of BISCOMAUN, but he has not
fulfilled the promise made by him.

4. It is submitted by Mr. A.K. Thakur, learned counsel



for the petitioner that the petitioner was holding the post of Assistant Depot Manager at Triveniganj, Supaul. He submitted that the BISCOMAUN through its different *krishak seva kendra* situated in all over Bihar distributes fertilizer to the farmers and wholesale dealers through P.O.S. Machine on M.R.P. rate. He was entrusted with fertilizer worth Rs.2,43,95,460.50 from 01.04.2018 to 17.01.2019 on various dates for sale and distribution between the farmers and wholesale dealers. He contended that he was required to remit the amount to the BISCOMAUN as per the guidelines issued by the headquarter after selling the fertilizer. However, on good faith the aforesaid fertilizer was sold by the petitioner to the farmers and other wholesale dealers on credit but the amount could not be remitted to the BISCOMAUN headquarter. He submitted that inspite of best effort made by him, he could not recover the aforesaid amount and remit to the BISCOMAUN. He contended that by now the petitioner has remained in custody for over two years and even charges have not been framed. He contended that the case is triable by the court of Magistrate and even though some of the offences stipulates the punishment, the maximum punishment the court of Magistrate can award in case the petitioner is found guilty is three years.



5. On the other hand, Mr. Abhay Kumar, learned counsel for the State and Mr. Y.V. Giri, learned senior counsel appearing for the BISCOMAUN have vehemently opposed the prayer for bail. Mr. Giri, learned senior counsel for the BISCOMAUN submitted that the petitioner has not fulfilled the promise made by him to the authorities of BISCOMAUN. He submitted that earlier the petitioner had also filed a supplementary affidavit stating therein that he will deposit 20% of the embezzled amount and rest in installments. However, the said promise has also not been fulfilled. He contended that in case the Magistrate cannot award sentence more than three years, Section 325 of the Code of Criminal Procedure provides that the Magistrate may refer the matter to the court of Chief Judicial Magistrate for awarding higher punishment.

6. In reply, Mr. Thakur, learned counsel for the petitioner submitted that the supplementary affidavit was filed at the initial stage when the bail application was filed in the year 2019. He contended that the said amount was proposed to be paid without any prejudice to the right of the petitioner. However, the said proposal was not accepted by the BISCOMAUN as a result of which the petitioner has remained in custody for over two years.



7. On the other hand, Mr. Giri, learned senior counsel for the BISCOMAUN submitted that the BISCOMAUN did not refuse the proposal made by the petitioner, but it wanted full and final amount to be paid by the petitioner.

8. Be that as it may, since it is not a case for recovery of embezzled amount and, if found guilty, at best, the petitioner can be awarded punishment as prescribed in law, I am not entering into the dispute of recovery of the amount.

9. As the petitioner has remained in custody for over two years in a case triable by the Magistrate and till date charges have not been framed, he is directed to be released on bail on furnishing bail bond of Rs.10,000/- (Rupees ten thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Supaul in connection with Triveniganj P.S. Case No. 173 of 2019 subject to the following conditions :-

(a) The petitioner shall not influence the witnesses or tamper with any document;

(b) At the time of furnishing the sureties, the petitioner shall furnish his address till the final disposal of the case or till further orders in that regard;

(c) The petitioner shall not leave the limits of India



without prior permission of the trial court;

(d) The petitioner shall not directly or indirectly make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such fact to the Court;

(e) The petitioner shall not do any act prejudicial to the interest of the prosecution;

(f) The petitioner shall receive the police report and other documents in terms of Section 207 of the Code of Criminal Procedure as and when the same is supplied to him by the Court;

(g) The petitioner shall abide by the above conditions scrupulously and in case of violation of any of the conditions, the prosecution would be at liberty to move this Court for cancellation of bail;

(h) One of the sureties must be a Government servant/elected people's representative of Panchayat/ Municipality; and the other one shall be a close relative.

(Ashwani Kumar Singh, J)

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