

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86669 of 2019

Arising Out of PS. Case No.-254 Year-2013 Thana- JOGAPATTI District- West Champaran

JITENDRA PRASAD S/o Late Jawahar Sah Resident of Village-
Mandhatapur, P.S.- Srinagar, Dist- West Champaran. A/p Village- Navgawan,
P.S.- Yogapatti, Dist- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. The District Manager, Bihar State Food and Civil Supplies Corporation Ltd,
West Champaran, Bettiah. Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Jai Prakash Verma, Advocate
For the Opposite Party/s	:	Mr. Ansar Ul Haque
For the B.S.F.C.	:	Mr. Niraj Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

12 12-01-2021 Heard Mr. Jay Prakash Verma, learned
Advocate for the petitioner and Mr. Niraj Kumar for the
Bihar State Food Corporation.

The petitioner seeks bail in anticipation of his
arrest in connection with Yogapatti P.S. Case No. 254 of
2013 dated 22.10.2013 instituted for the offences under
Sections 420/406 of the Indian Penal Code.

The prayer for anticipatory bail of the
petitioner was earlier disposed of by order dated
24.01.2018 passed in Cr. Misc. No. 2788 of 2018 with a
direction that in the event the petitioner is ready to
furnish bank guarantee with regard to the amount of
loss of Government money as mentioned in the written



report in the light of the direction of Hon'ble Supreme Court of India in SLP (Cr) 1779 of 2016 dated 28.02.2017 and the B.S.F.C. certifies that he has submitted bank guarantee of the aforesaid amount, within a period of six weeks from the date of receipt of the order in the court below, on his surrender, he shall be released on bail. But if he does not furnish the bank guarantee in the light of the judgment of the Supreme Court, the court below would be at liberty to pass appropriate order in accordance with law without taking into consideration the aforesaid observation of the Court.

Against the aforesaid order, the petitioner approached the Hon'ble Supreme Court of India vide SLP (Crl.) No. 4116 of 2018 (Cr. Appeal No. 1014 of 2018) which was heard along with other batch cases and a judgment was passed on 13.08.2018.

The Hon'ble Supreme Court gave liberty to the petitioner to approach the High Court and agitate all the issues which are open and available in law by filing appropriate proceedings.

Hence, the present petition.

The allegation against the petitioner is that he supplied only 1080 quintals of rice to FCI, Chanpatia in place of 2968 quintals (67% of 4430.80 quintals of paddy). The balance rice weighing 1888.63.600 quintals were not supplied. It was alleged that the petitioner has misappropriated the Government money equivalent to



the aforesaid quantity of rice which was not returned.

Learned counsel for the petitioner has submitted that the entire case hinges on the terms and conditions of the agreement between the B.S.F.C. and the petitioner dated 15.01.2012. According to that agreement, it has been urged, the rice had to be deposited by the petitioner in advance and in lieu of the aforesaid rice, paddy was to be delivered to the petitioner by the B.S.F.C. The agreement further indicated that rice would be accepted in the same gunny bags in which paddy would be delivered by the corporation. The cost of the gunny bags shall be borne by the miller or deducted from the bills submitted by the miller.

It has thus been urged that under such an agreement, there could not have been any possibility of the petitioner not having deposited the quantity of rice as expected. He, therefore, submits that the FIR has been lodged without application of mind.

It may be noted here that some of the rice millers had approached the Hon'ble Supreme Court of India vide SLP (Cr) No. 9196 of 2017 giving rise to Cr. Appeal No. 998 of 2018 which was heard along with a batch of cases in which the order of the High Court of Patna, which rejected the contention of those rice millers that there was no requirement of furnishing of bank guarantees where such millers had pledged their



property at the time of entering into agreement and consequent modification of the orders and the Hon'ble Supreme Court clarified that by usage of the expression "bank guarantee", by the Supreme Court in its earlier order pertained to the 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 was also clarified to be referable to the terms of agreement and not to the defalcated sum as was insisted upon by the B.S.F.C.

It was further adumbrated that on account of failure to submit and to keep such bank guarantees alive in respect of the defalcated sum, any benefit of bail/anticipatory bail which was withdrawn and non-bailable warrants were issued, would stand cancelled and recalled. The concerned millers were directed to furnish and keep alive bank guarantees as contemplated in terms of the agreement.

The order dated 28.02.2017 passed by the Supreme Court was declared to be applicable to each and every single case irrespective of the fact whether the concerned miller was a party to the proceedings before the Supreme Court or not.

Learned counsel for the petitioner submits that because of the order passed by the Supreme Court, a Bench of this Court had passed a conditional order on 24.01.2018 about which reference has been made



earlier.

It was thus submitted that the petitioner be not insisted upon for furnishing bank guarantee of the amount which is alleged to have been defalcated.

Keeping in mind the order dated 22.11.2019 passed by the Hon'ble Supreme Court in Cr. Appeal No. 1014 of 2018, this Court directs the petitioner to surrender before the court below and pray for bail. The court below shall grant provisional bail to the petitioner and shall peruse the agreement entered into between the petitioner and the opposite party no. 2. If from the agreement, it would be found that the paddy was to be supplied only after the advance deposit of rice and not otherwise, the provisional bail of the petitioner shall be confirmed.

However, it is further directed that the petitioner shall participate in the case if it goes to trial. Any unauthorized absence of the petitioner from such proceedings would render his bail, if granted, liable to be cancelled.

The petition stands disposed of accordingly.

(Ashutosh Kumar, J)

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