

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.14063 of 2022**

Arising Out of PS. Case No.-1543 Year-2017 Thana- SASARAM NAGAR District- Rohtas

Malay Kumar Shekhar, Son of Late Baleshwar Sharma, Resident of Village- Akodhi Gola, Police Station- Akhodhi Gola, District- Rohtas. At Present Resident of Shyam Sadan House No.-478, Urmila Medical Hall Gali, Phulwari P.S.- Anisabad, District-Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Manager, Food and Civil Supply Corporation Ltd. Rohtas, Sasaram, Bihar

... .. Opposite Party/s

**Appearance :**

|                          |   |                                      |
|--------------------------|---|--------------------------------------|
| For the Petitioner/s     | : | Mr. N. K. Agrawal, Sr. Advocate      |
|                          |   | Mr. Sanjeet Kumar, Advocate          |
| For the Opposite Party/s | : | Mr. Parmeshwar Mehta, APP            |
| For the BSFC             | : | Mr. Shailendra Kumar Singh, Advocate |
|                          |   | Mr. Utkarsha Utpal, Advocate         |

**CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR**  
**ORAL ORDER**

5      20-10-2022                      Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, within a period of four weeks from today.

2. Heard Mr. N. K. Agrawal, learned senior counsel, duly assisted by Mr. Sanjeet Kumar, learned counsel for the petitioner and Mr. Shailendra Kumar Singh, learned counsel for Bihar State Food and Civil Supplies Corporation as well as learned APP for the State.

3. The petitioner seeks regular bail, who is in custody in connection with Sasaram (Modal) P.S. Case No. 1543 of



2017, giving rise of Special Rice Mills Case No. 09 of 2017, registered for the offence punishable under Section 409 of the Indian Penal Code.

4. The prosecution case is based on a written report filed by the District Manager, F.C.I., Rohtas alleging therein that the petitioner, who was working as Block Agriculture Officer, Akodhigola, Rohtas was deputed as Godown Manager, Bazar Samiti, Takya, where the paddy was kept for Kharif marketing season 2015-16. In the aforesaid period, he had received 1,22,068.20 quintals of Custom Milled Rice (hereinafter referred to as 'the CMR') from different Primary Agricultural Cooperative Credit Societies (hereinafter referred to as 'the PACCS'). By the different orders, he released 1,21,838.06 quintals of CMR. Later, on the direction of the Collector, Rohtas, physical verification of the godown was made, in presence of the petitioner, but only 63.43 quintals of CMR was found in place of 230.14 quintals of CMR and in this way he (petitioner) misappropriated 166.69 quintals of CMR, worth Rs.5,43,076.02. It is also alleged that the petitioner had also received 1294 quintals of CMR for Kharif marketing season 2014-15, but on physical verification only 134.40 quintals of CMR was found in the godown and as such in this way he



misappropriated 1003.10 quintals of CMR worth Rs.30,71,492.20. It is further alleged that the petitioner misappropriated the Government money to the tune of Rs.36,14,568.22.

5. Learned senior counsel appearing on behalf of the petitioner submits that from the F.I.R., it would be evident that the petitioner, while working as Block Agriculture Officer, was deputed to work as godown Manager pursuant to the order of the District Magistrate, Rohtas at Sasaram at three different places situated at a considerable distance and as the condition of the Godowns were not proper, the CMR of Kharif marketing season 2014-15 as well as 2015-16 got rotten and destroyed on account of various reasons, which fact has also been informed to all the authorities of the BSFC/SFC, but no action has been taken. He further submits that the officers/authorities have made the physical verification of the godown without taking into consideration the fact that a large quintals of CMR got rotten or destroyed on account of rain water and bad infrastructure of godown in keeping the CMR safe. He next submits that though the petitioner was deputed to work as godown in-charge on three different places, but at no point of time any show-cause notice or any departmental proceeding has been initiated against



him for his alleged latches or misappropriation and all of a sudden the present F.I.R. has been instituted in the year 2017. Mr. N. K. Agrawal, learned senior counsel for the petitioner further submits that irrespective of the lodging of the F.I.R., the petitioner has been allowed to superannuate without there being any action, much less, any departmental proceeding, this fact also shows that there had never been any inaction on the part of the petitioner. He next submits that the petitioner is a retired Block Agriculture Officer, a Government servant, having fair antecedent, is in custody since 02.09.2021 and moreover the entire case is based on documentary evidences, which is under the custody of the police officials and the officials of the BSFC, hence there is no chance of tampering of the evidences or intimidating the witnesses.

6. While concluding his submission, learned senior counsel for the petitioner submits that the petitioner, though is in custody for more than one year, however, he is also ready to deposit a sum of Rs.5,00,000/- as a security in the account of the BSFC within three months from the date of his release, subject to final outcome of the trial.

7. On the other hand, learned counsel for the BSFC vehemently opposes the bail application and submits that the



petitioner being the godown in-charge was custodian of the CMR delivered to him and from the physical verification, a huge shortage of CMR was found, worth Rs.36,14,568.22 and on the materials available on record he is found to be responsible for the defalcation of such huge public money. He further relied upon an order passed by the Hon'ble Supreme Court dated 28.02.2017, passed in SLP (Crl.) No(s). 1779 of 2016 and on the strength thereof he submits that the petitioner is liable to deposit the entire defalcated public food-grains amounting to Rs.36,14,568.22. In support of the aforesaid submission, a counter affidavit has been filed on behalf of District Manager, SFC, Rohtas, bringing on record the aforesaid order.

8. Learned APP for the State also opposes the bail application and submits that the materials available on record speaks volume that the petitioner being godown in-charge was the custodian of the CMR, which was found misappropriated.

9. Heard the parties at length and after having gone through the materials available on record, it is evident that no show-cause notice or any opportunity of hearing was given to the petitioner for submitting his explanation before the institution of the F.I.R., which is entirely based on documentary



evidences, apart from the fact that even the physical verification report has not been brought on record. Further, this Court is at loss as to how the order of the Hon'ble Supreme Court passed in SLP (Crl.) No(s). 1779 of 2016 is applicable in the present case, as the order under reference has been passed in connection with the millers, who were entered into an agreement with the SFC with a clear stipulation that in case of any loss caused to the SFC, their Bank guarantee would be forfeited and liable to compensate the loss caused to the SFC. However, there is no such agreement between the petitioner and the SFC, apart from the fact that he, being a Government employee, was deputed to work as in-charge godown manager pursuant to the direction of the District Magistrate, Sasaram and there had never been any such condition contained in his order of deputation.

10. Before parting with the final outcome, it would be apt and proper to quote para. nos. 21 and 22 of the judgment of the Hon'ble Supreme Court in the case of **Sanjay Chandra Vs. Central Bureau of Investigation**, since reported in **(2012) 1 SCC 40** (2G Scam cases).

“21. In bail applications, generally, it has been laid down from the earliest times that the object of bail is to secure the appearance of the accused person at his trial by reasonable amount of bail. The object of bail is neither punitive nor



preventative. Deprivation of liberty must be considered a punishment, unless it is required to ensure that an accused person will stand his trial when called upon. The courts owe more than verbal respect to the principle that punishment begins after conviction, and that every man is deemed to be innocent until duly tried and duly found guilty.

22. From the earliest times, it was appreciated that detention in custody pending completion of trial could be a cause of great hardship. From time to time, necessity demands that some unconvicted persons should be held in custody pending trial to secure their attendance at the trial but in such cases, “necessity” is the operative test. In this country, it would be quite contrary to the concept of personal liberty enshrined in the Constitution that any person should be punished in respect of any matter, upon which, he has not been convicted or that in any circumstances, he should be deprived of his liberty upon only the belief that he will tamper with the witnesses if left at liberty, save in the most extraordinary circumstances.”

11. Regard being had to the materials available on record and considering the fact that investigation of the crime is already complete and the charge-sheet has been submitted and moreover the presence of the petitioner in custody may not be necessary for further investigation, as he is in custody since 02.09.2021, as also the undertaking given by the petitioner that



he would deposit Rs.5,00,000/-, on being released from custody, within a period of three months, let the petitioner, named above, be released on **provisional bail**, for a period of three months from the date of his release, on furnishing bail bonds of Rs.25,000/- (Rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate, 1<sup>st</sup> Class-cum-Special Magistrate, (Careless Rice Miller), Gaya in connection with Sasaram (Modal) P.S. Case No. 1543 of 2017, giving rise of Special Rice Mills Case No. 09 of 2017, subject to the condition that one of the bailors will be the close relatives of the petitioner with further conditions which are as follows:-

(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain physically present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(v) If within the aforesaid period of three months from



the date of the release of the petitioner, the said amount will be deposited to the concerned account of SFC and receipt thereof would be submitted to the jurisdictional Court, his bail bounds would be confirmed by the learned Court below itself and, in case, the petitioner fails to honour his undertaking within the period prescribed, his provisional bail stands cancelled.

12. The bail application stands disposed of.

**(Harish Kumar, J)**

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