

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38449 of 2023

Arising Out of PS. Case No.-22 Year-2023 Thana- DARBHANGA SADAR District-
Darbhanga

SHRAWAN KUMAR JHUNJHUNWALA Son of Late Gouri Shankar
Resident of Bhathiyari Sarai, Donar, P.S. - Sadar, Distt. - Darbhanga

... .. Petitioner.

Versus

The State of Bihar.

... .. Opposite Party.

Appearance :

For the Petitioner	:	Mr. S.D. Sanjay, Sr. Advocate Mr. Mohit Agarwal, Advocate Mr. Rahul Kumar, Advocate
For the State	:	Mr. Dilip Kumar No.1, APP

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

2 03-08-2023 Heard Mr. S.D. Sanjay, learned senior counsel assisted by
Mr. Mohit Agrawal and Mr. Rahul Kumar, learned Advocates
for the petitioner and Mr. Dilip Kumar No.1, learned APP
appearing on behalf of the State.

2. The petitioner, who is one of the Directors of M/s Ranisati
Fertilizer Private Limited, apprehends his arrest in a case
registered for the offences punishable under Sections 188, 406,
409, 420 and 120A of the Indian Penal Code and Section 7 (1)
(a) (ii) & 9 (I) & (II) of the Essential Commodities Act, 1955.

3. The prosecution case, in nutshell, is that a surprise inspection
was conducted in the factory premises of the petitioner by an
Inspecting Team headed by Sri Mohit Kumar Jha and after
examining the documents submitted by the petitioner and



physical verification of the unit, the alleged raw materials, finished products, other materials were seized. Upon comparison of the raw materials allotted to be purchased by the company and the physical stock available, deficiency of about 8445 bags of urea, 1538 bags of DAP, 6273 bags of SSP, 3868 bags of MOP were found and 478 bags of Ammonia Sulphate Raza was found without any allotment order and it is alleged that the petitioner had sold the alleged deficient raw materials in black marketing in the present financial year at a higher rate.

3.1. It is further alleged that some fertilizer of manufacturing batch of June-July and November, 2022 were also seen by the Inspecting Team. It is alleged that the Agricultural Directorate, Bihar, Patna vide order dated 18.06.2022 had suspended the allotment of raw materials and manufacturing licence of the company and then how the above alleged fertilizers were found in the unit. On these facts, it is alleged that the petitioner has without authority stored fertilizers after order of suspension of allotment of raw materials.

3.2. It is also alleged that the petitioner (Director of the company) has violated Clause 7, 11 (5), 19 [C] (ii) (iii) & (iv), 28 (1) (a) & (b), 35 (1) (a) (b) of the Fertilizer Control Order, 1985 and violated the provisions of the Essential Commodities



Act and Indian Penal Code. On the basis of the aforesaid allegation, Sadar P.S. Case No.22/2023 was lodged against the petitioner.

4. Mr. S.D. Sanjay, learned senior counsel appearing on behalf of the petitioner contended that the petitioner is one of the Directors of the Company, namely, Ranisati Fertilizer Private Limited is an innocent and has committed no offence much less alleged in the present prosecution. The company of the Petitioner obtained valid license bearing Fertilizer Manufacturing Authorization License No. 46[R] and Fertilizer Distribution Authorization License No. 110[R] from the Department of Agriculture, Government of Bihar for the purpose of manufacturing and selling mixed fertilizers. The said licenses of the company of the Petitioner was renewed/revalidated from time to time, lastly in the year 2021, which was valid up to 28.03.2022. Petitioner in terms of Clause 18 of the Fertilizer (Control) Order, 1985 applied for renewal of its licence for selling of fertilizer in Form A-1 for which payment through Challan was deposited on 09.03.2022, i.e. before the date of expiry of the licence. Similarly, the company of the Petitioner also applied for renewal of its licence for manufacturing in Form-D for which payment through Challan



was made on 04.03.2022, i.e before the expiry of date of licence.

4.1. Learned senior counsel next contended that Clause 18(4) of the Fertilizer (Control) Order, 1985 (hereinafter referred to as the Order, 1985) provides that if the application for renewal of licences has been filed within the time specified, the existing licence shall be deemed to be valid until the application for renewal is disposed off and, therefore, in the present case, as the application for renewal of licences are still pending consideration, the licence of the company of the Petitioner are valid.

4.2. He next contended that in the process of manufacturing of the mixed fertilizer, different raw materials are required, out of which certain are controlled and rests are de-controlled raw materials. Raw materials which are controlled could only be purchased upon an order of allotment of such raw material issued by concerned authority whereas materials which are de-controlled does not require any allotment order for purchase of the same from any authority. Raw materials, such as, Urea, DAP, SSP and MOP are controlled raw materials and permissions in the shape of allotment letter are issued by the competent authority for purchase of the same, whereas, raw



materials namely, Ammonium- sulphate, Dolomite, etc. are de-controlled raw materials which are free for trade in the market and can be purchased by any person in terms of law. After going through the entire F.I.R. it appears that the allegation against the petitioner is that certain raw materials including controlled and de-controlled were either found deficient or excess in comparison with the allotment letter and it is alleged that the deficient raw materials has been sold black market without authority, another certain fertilizers were seen in the unit of batch alleged to be manufactured of the months of June-July and November, 2022, whereas the permission for allotment of raw materials to the company of the petitioner was suspended vide letter dated 18.06.2022. Hence, the above allegations against the petitioner are completely false, misplaced and without any documentary material.

4.3. Mr. Sanjay next contended that so far as the allegation that the petitioner could not have continued manufacturing activity or procurement of raw material after order of suspension dated 18.06.2022 is concerned, the same is contrary to the provisions of Order, 1985 which provides that where no final order is passed within 15 days of the issuance of order of suspension, the order of impugned suspension shall be deemed to have been



revoked, as admittedly the interim suspension order dated 18.06.2022 was not finalized even after 15 days of the said order, the effect of the suspension has got revoked automatically in terms of the provisions of the Order, 1985 and, therefore, the allegation of storage of fertilizer after passing of suspension order dated 18.06.2022 is not made out against the petitioner.

4.4 Mr. Sanjay next contended that petitioner has different godown used for storage of raw materials and finished products, which are within the campus of the company where the alleged inspection was conducted by the team of the informant. But, for the reasons best known to the Inspecting Team, despite having access to all the godown of the company within the same premises, were not inspected in-spite of the repeated request of the petitioner and, therefore, the alleged deficiency/shortage of certain raw materials has been reported which is false as the alleged deficient raw materials are lying in the godown of the petitioner's company which was not accounted for during the course of inspection, though the inspection was conducted on two consecutive days.

4.5. It is next contended that from reading of the entire FIR, it appears that there is no allegation against the company of the petitioner that the petitioner has been engaged in selling any



substitute for another fertilizer or any fertilizer which is adulterated. Rather, the samples of the fertilizers collected from the unit of the company by the Inspecting Team were found up to be standard by the Government laboratory. The sample of fertilizer N:P.K -18:18:6 was found standard vide Report bearing No. 1513 issued in Form-L dated 31.03.2023 and similarly the sample of fertilizer N:PK-12:12:12 was found standard vide Report bearing No. 1512 issued in Form - L dated 31.03.2023.

4.6. Learned senior counsel further contended that Indian Penal Code deals with the offence of disobedience to order duly promulgated by public servant. In the present case, the petitioner has not disobeyed any order of the inspecting team, rather, admittedly the Petitioner upon receiving the call came before the inspecting team in his factory premises and handover entire documents available with him. Moreover, the said offence under Section 188 of the IPC is classified as bailable in nature.

4.7. It is further contended that petitioner is aged about 70 years and is also suffering from various medical illness, such as, high diabetes, high blood pressure, thyroid, cholesterol and is also having knee pain and other aging diseases causing difficulty in easy movement and merely for being a Director of the Company



without constituting any offence much less contravention of any of the provisions of the Fertilizer (Control) Order, 1985, is being harassed for no fault on his part, merely for running a business in the State of Bihar.

4.8. Mr. Sanjay, learned senior counsel lastly contended that, on the one hand, the State of Bihar is spending several crores of rupees for promoting industrialization in the State by inviting the industrialists to establish their units in the Bihar and for which several offers and packages are being offered to them, but, on the other hand, the State and its instrumentalities are in a way frustrating the object of the State Government by filing false and frivolous case against the companies, which are already running. On the aforesaid submissions, it is prayed that the petitioner may be enlarged on anticipatory bail.

5. *Per contra*, learned APP appearing on behalf of the State vehemently opposing the bail application submitted that the petitioner has violated the various provisions of Fertilizer (Control) Order, 1985, Essential Commodities Act as also the Indian Penal Code, hence he does not deserve privilege of bail.

6. Having heard the parties at length, considering their rival submissions and after going through the materials available on record, I am inclined to grant the privilege of anticipatory bail to



the petitioner. Let the above named petitioner, be released on bail, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing bail bond of Rs.25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of the learned Court below where the case is pending/successor Court in connection with Darbhanga Sadar P.S. Case No. 22 of 2023, subject to the condition as laid down under Section 438 (2) of the Cr.P.C.

(Anjani Kumar Sharan, J)

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