

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56115 of 2023

Arising Out of PS. Case No.-137 Year-2023 Thana- BIHAR District- Nalanda

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SRI PREMNATH @ PREMNATH GUPTA SON OF JAGDISH PRASAD
RESIDENT OF VILLAGE- WARD NO. 35, MOHALLA- SHERPUR
KHANCHI, PS- BIHAR THANA, DISTT- NALANDA

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Suryakant Kumar, Adv.

For the Opposite Party/s : Mr.Parmeshwar Mehta, APP.

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

2 14-09-2023 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner apprehends his arrest in a case registered for the offences punishable under Section 420 of the Indian Penal Code and Section 7 of Essential Commodities Act.

3. The prosecution, in brief, is that, on 11.02.2023, the shop of the petitioner was inspected and it was found that on 10.02.2023, petitioner had received 40.24 quintals of rice and 10.12 quintals of wheat for the month of January, 2023, but the same was not received on EPOS machine. It was further alleged that 6.66 quintals of rice was found in surplus, whereas 12.02 quintals of wheat was found less in stock.



4. It is submitted by learned counsel for the petitioner that petitioner is quite innocent and has committed no offence. No such occurrence as alleged ever took place. He has been falsely implicated in this case due to ulterior motive. The allegation levelled against the petitioner is false and based on concocted facts. The real fact is that due to failure of server link, food grain could not be received on E-POS machine by the petitioner. It is further submitted that the anticipatory bail of the petitioner has been rejected by learned Court below directing the petitioner to appear before learned Court below and seeks regular bail since the petitioner is availing the privilege of Section 41(A) and he has no apprehension of arrest in the present case. Learned counsel for the petitioner further relied upon the judgment of the Hon'ble Patna High Court in the case of **Gauri Shankar Roy Vs. State of Bihar** reported in **2015(3) PLJR** in which it was held that the issuance of notice to appear under Section 41-A(1) of the Code or compliance of terms of such notice or undertaking to comply with the terms of notice would no render any person to be in police custody or police bail dis-entitling him from invoking the provisions under Section 438 Cr.P.C. Till the time any person is not formally arrested under Section 41 of Cr.P.C., it is always open for him



as matter of right to invoke the statutory remedy and seek anticipatory bail. Rejection of anticipatory bail on this score, is certainly against the mandate of law and cannot be legally sustained. Petitioner has no criminal antecedent as mentioned in para-3 of this application.

5. Learned APP for the State opposes the prayer for bail.

6. Having regard to the facts and circumstances of the case, as there is no specific overt act against 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 Bihar P.S. Case No. 137 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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