

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.11828 of 2024

Arising Out of PS. Case No.-7 Year-2018 Thana- BAISI District- Purnia

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Birchand Prasad @ Birchandra Prasad @ Birchandra Rai @ Virchandra Prasad, Son of Bhikhan Chaudhary @ Bhekhan Chaudhary, Resident of Vill.-Bhauwa, P.S.-Patauri, Distt.- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Prince Kumar Mishra, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 22-02-2024 Heard Mr. Prince Kumar Mishra, learned counsel appearing on behalf of the petitioner and Mr. Parmeshwar Mehta, learned APP for the State.

2. The petitioner seeks pre-arrest bail in connection with Baisi P.S. Case No. 7 of 2018 dated 05.01.2018 registered for the offence(s) punishable under Section 7 of the Essential Commodities Act.

3. As per the allegation made in the FIR, a truck bearing registration No.BR01GF/9727 was found loaded with 192 quintals 70 kilograms of rice and the same was seized by the police officer at the Dalkola check post on the ground that the driver had produced a receipt, showing that the entire grains were sold by the petitioner's firm.



4. Learned counsel appearing on behalf of the petitioner submitted that in view of notification of Food and Civil Supplies Department, as contained in Memo No.GSR 104(E), dated 15.02.2002, in exercise of power under section 3 of the Essential Commodities Act, 1955 (in short “the E.C.Act”), the rice has been taken out of the control list and it is still continuing even after coming into force of Bihar Targeted Public Distribution System (Control) Order, 2016 and in support of his contention that no case under Section 7 of the E.C. Act is made out against the petitioner, who has been alleged to have sold the rice, he has relied upon judgments of this Court in the case of **Arvind Kumar Vs. the State of Bihar**, reported in **(2014) 4 PLJR 255** and in the case of **Anjay Kumar & Ors. Versus State of Bihar & Anr. (CWJC No.52982 of 2017)**.

5. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail and submitted that as per the allegation made in the FIR, the petitioner has been found to have fraudulently misappropriated the government rice, however, he has not denied that the connivance of the government official in the commission of offence cannot be ruled out.



6. Having considered the rival submissions made on behalf of the parties, as well as, the allegation made in the FIR, the admitted position as on date, with respect to the sale and purchase of rice in view of the notification dated 15.02.2002, is that the rice has been kept out of the control order and even subsequent to the Bihar Targeted PDS Control Order, 2016, the notification has not been repealed till date. In absence of any ingredient of offence under Section 7 of the E.C. Act, no case under Section 7 of the E.C. Act is made out. The law laid down by this Court in the cases of **Arvind Kumar (Supra)** and **Anjay Kumar (Supra)**, has already clarified the said position. The petitioner cannot be held to face prosecution, as alleged in the FIR. I am of the opinion that petitioner has, prima facie, made out a case to be released on pre-arrest bail.

7. The District Court is directed to release the petitioner, abovenamed, on pre-arrest bail, in the event of his arrest or surrender before the Court below within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Sub-Divisional Judicial Magistrate, Purnea in connection with Baisi P.S. Case No. 7 of 2018 subject to the conditions as laid down under Section



438(2) of the Cr.P.C.

(Purnendu Singh, J)

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