

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85750 of 2023

Arising Out of PS. Case No.-39 Year-2021 Thana- SHAMBHUGANJ District- Banka

Kailu Sharma @ Shambhu Kumar S/O Yogendra Sharma R/O Village-
Randih, P.S- Shambhuganj, Distt.- Banka, At Present Residing At Mohalla-
Kalicharan Bengal Lane, Adampur, Bhagalpur, P.S- Adampur, Distt.-
Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Mining Inspector-Cum-Competent Officer, Banka, Distt.- Banka.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Jha, Advocate
For the Opposite Party/s : Mr. Naresh Dikshit, Spl. P.P. Mines Department,
Mr. Kumar Harshvardhan, AC to Special P.P.

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

2 18-01-2024 Heard learned counsel for the petitioner and learned A.P.P.
for the State.

02. In the present case, the petitioner is apprehending his arrest in connection with Shambhuganj P.S. Case No. 39 of 2021 (G.R. No. 445 of 2021), registered on 15.02.2021, for the alleged offence under Section 379 of the Indian Penal Code, Section 40 of M.M.R.D. Act, Section 56(2) of Bihar Minerals (Concession, Prevention of illegal Mining, Transportation & Storage Rules, 2019 and Section 15 of Environment Protection Act.

03.As per prosecution case, in a drive against the illegal mining of sand, authorities found 1,68,000 cubic feet of sand excavated



and on inquiry came to know about the petitioner and other co-accused persons being involved in the illegal mining of sand.

04. Learned counsel for the petitioner submits that the petitioner is innocent and has been falsely implicated in this case. There is no material to show the involvement of the petitioner. None of the offences mentioned in the F.I.R. is applicable against the petitioner as he neither stored nor transported the illegal sand and no recovery has been shown from the petitioner. The prosecution story is not believable that 1,68,000 cubic feet of sand was mined and the authority was unaware about it. In the similar circumstances, co-accused persons, namely, Pradeep Kumar Roy @ Churo Roy @ Churo Sharma, Sanjay Sharma and Sarvan Sharma have been granted anticipatory bail by the different Co-ordinate Benches of this Cour vide order dated 08.09.2022 passed in Criminal Misc. No. 66942 of 2021 and order dated 25.04.2023 passed in Criminal Misc. No. 66479 of 2022, respectively. The petitioner is having criminal antecedent of one case of similar nature but he is on bail and in that case as well, the name of the petitioner came up only on suspicion.

05. Learned Special P.P. for the Mining Department opposes the prayer for anticipatory bail submitting that a huge quantity of sand was illegally mined and the petitioner's name surfaced during investigation.



06. Having regard to the facts and circumstances and submissions made on behalf of the parties and considering the distinct lack of any material to connect the petitioner with the offences as alleged, let the petitioner, above named, in the event of his arrest or surrender before the court concerned within a period of eight weeks from today, be released on bail, on furnishing bail bond of Rs. 20,000/- (Rupees Twenty Thousand Only) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate, Banka/concerned court in connection with Shambhuganj P.S. Case No. 39 of 2021 (G.R. No. 445 of 2021) subject to the condition laid down under Section 438(2) of the Code of Criminal Procedure and other following conditions:

- (i) One of the bailors will be a close relative of the petitioner.
- (ii) The petitioner will remain present on each and every date fixed by the court below, if so required by the learned trial court.

(Arun Kumar Jha, J)

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