IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40726 of 2018

Arising Out of PS. Case No.-43 Year-2016 Thana- KASHICHAK District- Nawada

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Radhe Sharma, Son of Late Harangi Singh, Resident of Village Nimi, P.S. Shekhopur Sarai, District- Sheikhpura, Director M/S. Arena Agro Industries Private Limited, Mahrath, P.S. Kashichak, District- Nawada.

... ... Petitioner/s

Versus

1. State of Bihar
2. The Bihar State Food and Civil Supplies Corporation Limited, through its District Manager, Nawada.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Suraj Samdarshi, Advocate
For the State	:	Mr. Parmeshwar Mehta, A.P.P
For the BSFC	:	Mr. Umesh Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA

ORAL ORDER

7 28-04-2026 Heard learned counsel for the parties as well as learned APP for the State.

2. The present application has been filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'Cr.P.C') for quashing the order dated 06.11.2017 passed by learned Judicial Magistrate, 1st class, Gaya (hereinafter referred to as 'Magistrate') in connection with G.R. No. 12221 of 2016 arising out of Kashichak P.S. Case No. 43 of 2016 wherein anticipatory bail earlier granted to the petitioner was cancelled, for non- furnishing the bank guarantee for the disputed outstanding amount.

3. As per prosecution case, the petitioner, who is the

Director of M/s. Arena Agro Industries Private Limited, had entered into an agreement for the Kharif Marketing Season 2012–13 for milling of paddy and under the said agreement, the petitioner had received 63,092.45 quintals of paddy and was required to supply 42,271.94 quintals of custom milled rice, i.e., 67% of the total paddy by 30.12.2013. However, the petitioner delivered only 19,170 quintals of the said rice by 30.12.2013 and failed to deliver the remaining 23,101.94 quintals of custom milled rice worth Rs.5,00,28,640.43/-. The petitioner had deposited only Rs.1,01,000,00.00/- and failed to deposited balance amount of Rs.3,99,28,640.43/- alongwith 12% interest, aggregating to a total amount of Rs.4,69,91,081.08/-.

4. On the basis of the aforesaid allegations, District Manager of Bihar State Food and Civil Supply Corporation Ltd. (hereinafter referred to as 'BSFCSC'), Nawada (O.P. No.2), lodged an F.I.R in Kashichak Police Station under sections 420, 406, 467 and 468 of I.P.C which was registered on 13.05.2016 as Kashichak P.S Case No.43 of 2016. The Petitioner was granted anticipatory bail *vide* Order dated 08.06.2016 passed in A.B.P. No.467 of 2016.

5. The Hon'ble Supreme Court in ***State of Bihar v. Divesh Kumar Chaudhary and Ano.*** reported in ***(2018) 16 SCC***

817 *vide* order dated 28.02.2017, upon the appeal filled by BSFCSC with regard to several millers (not in the case of petitioner), directed that all accused in F.I.R.s will ensure that bank guarantee, if not furnished, is furnished and if lapsed, is renewed within a period of one month from the date of this order, failing which the anticipatory bail will stand cancelled. Based on the said order of Apex Court, BSFCSC moved an application for cancellation of bail bond of the petitioner. The petitioner in reply to that application stated that BSFCSC did not prefer any application for cancellation of bail in case of petitioner and further, the bank guarantee was to be given as per Clause 3 of the agreement dated 23.01.2013. However, *Vide* Order dated 06.11.2017, learned Magistrate cancelled the bail of petitioner on the ground non-furnishing of bank guarantee by petitioner in the light of said order of Apex Court. Aggrieved thereby, petitioner has preferred this present application, challenging the order dated 06.11.2017 of learned Magistrate. Petitioner has further filed I.A No.1 of 2025 for seeking additional relief for setting aside the order dated 16.09.2022 passed by the learned Magistrate, whereby process under Section 82 of the Cr.P.C. has been issued against the petitioner.

6. Learned counsel for the petitioner submits that

order dated 06.11.2017 passed by the learned Judicial Magistrate, 1st Class, Gaya, whereby the anticipatory bail granted to the petitioner has been cancelled, is wholly illegal, arbitrary and without jurisdiction. Learned counsel further submits that the petitioner was granted anticipatory bail by the competent court and there has been no violation of any condition of the said bail order. The cancellation of bail solely on the ground of non-furnishing of bank guarantee is misconceived and contrary to settled legal position. Learned counsel further submits that the entire dispute arises out of a contractual transaction between the petitioner and the BSFCSC with regard to supply of custom milled rice, and the issue relating to furnishing of bank guarantee is governed strictly by the terms of the agreement entered into between the parties. He further submits that as per the agreement, the obligation of the petitioner was limited to furnishing bank guarantee to a specified extent and not for the entire alleged outstanding or defalcated amount.

7. Learned counsel of petitioner further submits that the learned Magistrate has erroneously relied upon the directions issued by the Hon'ble Apex Court in ***Divesh Kumar Chaudhary (supra),*** without appreciating the true import and

scope of the said order. It is submitted that the said issue now stands conclusively settled by the judgment of the Hon'ble Supreme Court in ***Arvind Tiwary v. State of Bihar & Anr.*** reported in ***(2018) 8 SCC 475*** , wherein it has been categorically held that the expression "bank guarantee" refers only to the bank guarantee which a miller is required to furnish in terms of the agreement and not with respect to the entire alleged defaulted amount. Learned counsel further submits that any adverse order including cancellation of bail or issuance of non-bailable warrant on account of non-furnishing of bank guarantee beyond contractual obligation is unsustainable in law. Learned counsel further submits that the order dated 16.09.2022 passed by the learned Magistrate, issuing process under Section 82 Cr.P.C. against the petitioner is also illegal and unsustainable. It is submitted that the said order has been passed in a mechanical manner without following the mandatory procedure of awaiting the execution report of the non-bailable warrant, which is a condition precedent for initiating such proceedings. It is thus submitted that order dated 06.11.2017 as well as the subsequent order dated 16.09.2022 are made in a mechanical manner without application of mind and without having regard to settled position of law and are liable to be set aside.

8. Learned counsel appearing for O.P. No. 2 submits that the present quashing application is wholly misconceived, devoid of merit and fit to be dismissed at the threshold. Learned counsel further submits that the present case arises out of Kashichak P.S. Case No. 43 of 2016 instituted at the instance of the District Manager, Bihar State Food & Civil Supplies Corporation Limited, Nawada, against the petitioner under Sections 420, 406, 467 and 468 of the Indian Penal Code. The allegation against the petitioner is of serious nature involving large-scale misappropriation of public money. Learned counsel further submits that the petitioner, being a miller, had received 63,092.45 quintals of paddy for milling and was under obligation to supply 67% custom milled rice, i.e., 42,271.94 quintals. However, the petitioner supplied only 19,170 quintals and failed to deliver the remaining 23,101.94 quintals of custom milled rice despite repeated directions and reminders issued by the Corporation. The value of the undelivered quantity amounts to Rs. 5,00,28,659.19, thereby causing huge loss to the State exchequer.

9. Learned counsel for O.P. No. 2 further submits that for recovery of the aforesaid amount, a certificate proceeding being Certificate Case No. 9(M) of 2016 was initiated before the

District Certificate Officer, Nawada, wherein the petitioner appeared and participated. During pendency of the said proceeding, the petitioner deposited a meagre amount of Rs. 1,10,000 and a substantial amount still remained outstanding. After due consideration, final order was passed by the competent authority vide Memo No.10 dated 19.04.2017. Thereafter, petitioner deposited four cheques amounting to Rs. 90,00,000, all of which were dishonoured due to insufficient funds. Consequently, a separate criminal case being Nagar P.S. Case No. 579 of 2017 was instituted against the petitioner under Sections 420 and 406 of the Indian Penal Code as well as Section 138 of the Negotiable Instruments Act. Learned counsel further submits that despite obtaining anticipatory bail, the petitioner has committed fraud by issuing 4 cheques of Rs.90,00,000 which were bounced and has suppressed material facts from this Hon'ble Court. Learned counsel further submits that the petitioner is absconding in connection with the subsequent case arising out of dishonour of cheques. He further submits that the anticipatory bail granted to the petitioner was rightly cancelled by the learned Magistrate *vide* order dated 06.11.2017, on account of non-compliance of the direction of Apex Court in ***Divesh Kumar Chaudhary (supra)*** relating to furnishing of bank guarantee. It is thus submitted that the said order does not suffer from any illegality or infirmity warranting interference by this Hon'ble Court.

10. Learned A.P.P. for the State submits that the cancellation of anticipatory bail is in consonance with the direction issued by the Hon'ble Apex Court in ***Divesh Kumar Chaudhary (supra)*** *vide* order dated 28.02.2017, wherein it was categorically directed that all accused persons in similar matters shall furnish/renew bank guarantee within a period of 30 days from the date of order, failing which the protection granted by way of anticipatory bail shall stand cancelled. Learned A.P.P. further submits that the petitioner having failed to comply with the said direction, the learned Magistrate has rightly cancelled the anticipatory bail and issued further process for his appearance. It is thus submitted that no illegality or perversity is found in the impugned order and the present application does not call for any interference in exercise of inherent jurisdiction.

11. Having heard the learned counsel for the parties as well as the learned A.P.P. for the State and upon perusal of the materials available on record, it appears that the present case arises out of Kashichak P.S. Case No. 43 of 2016 instituted at the instance of the District Manager, Bihar State Food & Civil

Supplies Corporation Limited, Nawada, alleging inter alia that the petitioner, being the Director of a rice mill, had entered into an agreement for milling of paddy during the Kharif Marketing Season 2012–13 and had received a substantial quantity of paddy for the said purpose. The allegation, as reflected from the First Information Report, is that the petitioner was required to deliver 67% of the custom milled rice against the paddy received. However, he supplied only 19,170 quintals of custom milled rice and failed to deliver the remaining substantial quantity, thereby causing financial loss to the Corporation. It is further alleged that despite repeated reminders, the petitioner did not fulfill his contractual obligation and thereby misappropriated the value of the undelivered stock, which was meant for public distribution and welfare schemes. It further transpires from the record that the petitioner was granted anticipatory bail, which subsequently came to be cancelled by the learned Magistrate *vide* Order dated 06.11.2017 on account of non-furnishing of furnishing of bank guarantee in the light of Apex Court direction in ***Divesh Kumar Chaudhary (supra)*** and subsequently *vide* order dated 16.09.2022 passed by the learned Magistrate, process under section 82 is issued against petitioner. The question which falls for consideration is as to "*whether* *order dated 06.11.2017 passed by learned Magistrate requires intervention by this court under section 482 Cr.P.C in exercise of inherent jurisdiction".*

12. Since this whole issue is revolve around the Order of the Hon'ble Supreme in ***Divesh Kumar Chaudhary (supra),*** so it is appropriate here cite relevant paragraph of said order , which is as under:

> ***"10****……..Since the anticipatory bail/bail was granted more than one year back and financial interest of the State is or can be secured, we are not inclined to cancel the anticipatory bail/bail but modify the order of granting of anticipatory bail/bail conditional adding conditions as follows:*
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> *(1)* ***The accused in all the FIR(s), will ensure that bank guarantee, if not furnished, is furnished and if lapsed, is renewed within a period of one month from today failing which the anticipatory bail/bail granted will stand cancelled.***
>
> *(2) The accused will cooperate with investigation/trial and their failure to appear, when required, will be a ground for cancellation of anticipatory bail/bail. An order of cancellation will be passed by the trial court on being satisfied about such failure.*
>
> *(3) The investigation will be completed within a period of three months.*
>
> *(4) All the accused will be tried only at five places viz. Patna, Gaya, Chhapra, Darbhanga and Purnia by officers of the appropriate rank determined by the High Court within one week from today. The High Court may specify the area of jurisdiction of the said five courts by a public order. If required by the High Court, the State*

Government may sanction extra strength of officers with requisite infrastructure so that normal work of courts is not disturbed on account of the special arrangement for these cases.

(5) The officers posted will deal with these cases exclusively. If free from their work, any other work may be assigned to the said officers.

(6) The authorities concerned will be at liberty to encash the bank guarantee(s) after holding that there is a breach of terms of the agreement which decision will be subject to appropriate remedies of the parties.

(7) If not otherwise encashed, the bank guarantee will be kept alive till the trial is over. However, deposits/furnishing of bank guarantees will be abide by further orders of the trial court, interim or final.

(8) If any amount is deposited by the accused, the said amount will be adjusted in the amount of the bank guarantee, which is to be furnished by the accused.

(9) The accused will surrender their passports to the respective courts within a period of four weeks from today and will not leave the country without prior permission from the court concerned.

On compliance of the above order, if any accused is in custody, he will be granted bail in accordance with law……….”

(emphasis supplied)

13. The Hon’ble Supreme Court further make clarification regarding furnishing of bank guarantee in ***Arvind Tiwary (supra)*** and held as under:

“20.1. *The expression “bank guarantee” used in Condition 1 as stipulated in order dated 28-2-2017 [State of Bihar v. Divesh*

Kumar Chaudhary, (2018) 16 SCC 817] passed by this Court pertains to bank guarantee which the miller concerned was obliged, in terms of the agreement in question to furnish. The obligation to furnish the bank guarantee and to keep it alive is referable to the terms of the agreement and not to the "defalcated sum" as was submitted by the Corporation.

20.2. If *on account of failure to submit and to keep it alive in respect of the "defalcated sum", any benefit of bail/anticipatory bail was withdrawn and orders of non-bailable warrants were issued, such orders stand cancelled and recalled.* ***However the millers concerned ought to have furnished and kept alive bank guarantees as contemplated in terms of the agreement. If there be any failure on this count the cancellation of bail/anticipatory bail was perfectly justified****.***"**

(emphasis supplied)

14. It would be apposite to cite relevant paragraph of the agreement, which is as under:

"2. *The second party has monthly milling capacity of 1800 MT of Paddy, but,* ***he has to furnish Bank Guarantee equivalent to the value of Paddy taken by him for milling in concerned procurement season*** *and in case, he requires further quantity of paddy for milling, he has to furnish further Bank Guarantee equivalent to the value of paddy desired by him to be taken for milling. However, he has to deliver C.M.R. in time before next lot of paddy is taken by him. The said Bank Guarantee of Rs.2,00,000. (Two lack only) issued in favour of District Manager, Bihar State Food & Civil Supplies Corporation Ltd., Nawada Vide Serial no.551285 dated 19/1/13 has been submitted* *by the second party as per State Government instruction from time to time.*

3. *The second party is at liberty to take paddy for milling as much as the quantity he desires during the said procurement season in accordance with his monthly milling capacity but,* ***he has to furnish Bank Guarantee for the value of paddy, which he takes for milling or in case, be is not capable of furnishing Bank Guarantce, he has to pledge immovable property in the form of mortgage bond for the rest amount or he can pledge immovable property for the entire value of paddy which he takes for milling.*** *…………….”*

(emphasis supplied)

15. In the present case, from the agreement governing the parties, it is evident from clause 2 of agreement that the petitioner, was under a clear contractual obligation to furnish a bank guarantee corresponding to the value of paddy taken for milling. The terms further stipulate that in the event the petitioner intended to additional quantity of paddy beyond the initial allotment, he was required to furnish a further bank guarantee equivalent to the value of such additional paddy. The clause 3 of agreement further provides that in case, petitioner is not capable of furnishing bank guarantee, he has to pledge immovable property in the form of mortgage bond for rest amount or for entire value of paddy. It is, therefore, manifest that the scheme of the agreement ensures that at all stages, the

value of paddy lifted remains adequately secured, either by way of bank guarantee or by mortgage of property. It is further discernible from the terms that the furnishing of bank guarantee is not a one-time formality but a continuing obligation, directly linked with the quantity of paddy taken from time to time. The petitioner was also required to adhere to timely delivery of C.M.R. before lifting subsequent lots, thereby maintaining financial and operational discipline under the agreement.

16. The legal position in this regard has been well settled by Apex court. The Hon'ble Supreme Court in ***Dinesh Kumar Chaudhary (supra)*** has held that in matters arising out of FIRs relating to such transactions, the accused must ensure that the bank guarantee, if not already furnished, is furnished, and if lapsed, is duly renewed within the stipulated period of thirty days from date of this order, failing which the privilege of anticipatory bail shall stand cancelled. Further, in ***Arvind Tiwary (supra)***, Apex court observed that a bank guarantee is to be construed strictly in the context of the terms of the agreement and is confined only to the extent of the guarantee contemplated under the contractual stipulations, and not to the entire alleged defaulted amount.

17. In the present case, when the case of the petitioner

is examined in light of the aforesaid settled principle, it emerges that the agreement contemplated a bank guarantee corresponding to the value of paddy taken for milling and in case of non-furnishing of bank guarantee partially or completely, immovable property is to be pledged for rest amount or for entire value of paddy respectively. The petitioner has admittedly not furnished bank guarantee (except initial bank guarantee of Rs.2 lacs) for received paddy and has not pledged any immovable property for rest amount. Thus, there is clear deficiency in complying with the contractual requirement. The partial furnishing of bank guarantee cannot be treated as substantial compliance. The learned Magistrate has committed no error in cancelling the anticipatory bail granted earlier to petitioner on ground of non-furnishing of bank guarantee in light of the settled position of law.

18. From the above discussion, this Court is of the considered opinion that the petitioner has failed to demonstrate bona fide compliance with the above said direction of Hon'ble Apex Court and the learned Court concerned has rightly cancelled his anticipatory bail and taken further coercive steps for his appearance and the same are not liable to be quashed while exercising inherent jurisdiction of this court.

19. Accordingly, this application, being devoid of merit, is hereby dismissed.

20. I.A.(s), if any, stands disposed of.

21. Interim order, if any, is vacated.

22. Let a copy of this order be communicated to the court concerned forthwith for information and necessary compliance.

(Sunil Dutta Mishra, J)

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