

Kamlesh Vs. State

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Court : Delhi

Decided On : Nov-11-2014

Judge : Sunita Gupta

Appellant : Kamlesh

Respondent : State

Advocate for Def. : Mr. M.N. Dudeja

Advocate for Pet/Ap. : Mr. Yogesh Kumar

Judgement :

\$~ * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

11. h November, 2014 + BAIL APPLN. 1102/2014 KAMLESH Through:
Petitioner Mr. Yogesh Kumar, Adv. versus STATE Through: Respondent Mr.
M.N. Dudeja, Additional Public Prosecutor for the State alongwith ASI Tejram
Police Station Najafgarh, Delhi. CORAM: HON'BLE MS. JUSTICE SUNITA
GUPTA O R D E R : SUNITA GUPTA, J.

1. This is an application u/s 438 Cr.P.C moved by the petitioner for grant of anticipatory bail in case FIR No.371 u/s 7/10/55 of EC Act, P.S. Najafgarh, Delhi.

2. Prosecution case is that as per the direction of Special Commissioner, Department of Food Supplies and Consumer Affairs, a team comprising of Senior

Officers visited the business premises of FPS No.8994, M/s Amit Provision Store functioning at Plot No.18, Ishwar Colony, Najafgarh, Delhi on 01.05.2014. Bharat Bhushan was present, who introduced himself as helper of licensee of FPS. The record was not available in the business premises of FPS which was brought by Bharat Bhushan from outside the shop. Brij Bhushan who introduced himself as husband of licensee (Kamlesh) was also present. Record was seized. On physical checking of stock, excess of 7.74 quintal of rice was found. Other irregularities like stock board not displayed, licence not displayed, complaint book not found inside FPS, certificate of weighing machine not found and list of BPL/AAY cards not displayed, were found. Pursuant to a complaint received, the present FIR was registered.

3. It is submitted by learned counsel for the petitioner that proper inspection of fair price shop of the petitioner was not conducted. Compliance of Section 100 of CPC was not done. The inspection was not witnessed by any independent and respectable inhabitants of the locality. The alleged excess quantity of rice is in fact food grain wastage which was accumulated by the passage of time in and outside the business premises of FPS during loading/unloading of bags containing food grains. Moreover during the process of distribution of food grains to the beneficiaries, wastage of some quantity of food grains can never be avoided which has happened in the instant case. It was further submitted that as per the relevant provisions of law, the raiding party was required to collect samples to authenticate the allegation of excess rice but despite request, the samples were not collected. The relevant records of the FPS are already in possession of the concerned officers. Bail Appln.1102/2014 The petitioner is cooperating in the Page 2 of 4 investigation. On 12.05.2013, the Investigating Officer collected sample of food grains wasted ,hence no further recovery is to be effected. It was further submitted that pursuant to the raid, the licence of the petitioner was suspended, which has been restored vide order dated 16.10.2014. Since the petitioner is cooperating in the investigation and is not required for the purpose of custodial interrogation, as such she be released on bail.

4. Application is opposed by learned APP for the State and it was submitted that the raid was conducted by senior officers comprising of SDM Seemapuri, IPS

Probationer, Inspector AntiCorruption Branch and other senior police officers. During the course of inspection 7.74 quintal of rice was found in excess. It was submitted that instead of providing the food grains to the authorised persons, the petitioner used to sell food grains at market rate to earn money. The offence is grave in nature which entails punishment upto 7 years as such petitioner is not entitled to be released on bail.

5. When the bail application was filed, interim protection was granted to the petitioner and she was directed to join investigation as and when required. It is not in dispute that pursuant to the grant of interim protection, she has joined investigation and all the documents have been taken in police possession. The question whether the excess of 7.74 quintal is rice as is the case of prosecution or food grains waste as alleged by the petitioner is required to be proved during the course of trial as sample has already been taken.

6. As per the status report, statement of the witnesses have been recorded and draft charge-sheet has already been prepared which will be submitted after scrutiny by the prosecution branch meaning thereby that petitioner is no longer required for the purpose of investigation.

7. Under the circumstances, keeping in view the totality of the facts and circumstances of the case, it is ordered that in the event of her arrest:(i) Petitioner be admitted to bail on her executing personal bond in the sum of Rs.15,000/- (Rupees Fifteen Thousand only) with one surety in the like amount to the satisfaction of the concerned I.O./SHO. (ii) She shall join the investigation as and when called for by the I.O. (iii) She shall furnish her address as well as her contact number to the Investigating Officer. (iv) She shall not threaten or coerce complainant or any prosecution witness. The application is accordingly disposed of. Copy of this order be given dasti under the signature of Court Master. (SUNITA GUPTA) JUDGE November 11, 2014/as