

# Arvind Tiwary vs The State Of Bihar on 13 August, 2018

Equivalent citations: AIRONLINE 2018 SC 157

Author: Uday Umesh Lalit

Bench: Uday Umesh Lalit, Abhay Manohar Sapre

NON -REPORTA

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 998 OF 2018 @  
(SPECIAL LEAVE PETITION (CRL.) NO.9196 OF 2017)

Arvind Tiwary

.....Appel

Versus

State of Bihar and Another

.....Res

With

Criminal Appeal No.996 of 2018 @  
(Special Leave Petition (Crl.) No.9029 of 2017)

Criminal Appeal No.997 of 2018 @  
(Special Leave Petition (Crl.) No.9043 of 2017)

Criminal Appeal No.999 of 2018 @  
(Special Leave Petition (Crl.) No.9246 of 2017)

Criminal Appeal No.1026 of 2018 @  
(Special Leave Petition (Crl.) No.9334 of 2017)

Criminal Appeal No.1019 of 2018 @  
(Special Leave Petition (Crl.) No.9312 of 2017)

Criminal Appeal No.1020 of 2018 @  
(Special Leave Petition (Crl.) No. 9409 of 2017)

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ANITA MALHOTRA

Date: 2018.08.13

Criminal Appeal No.1021 of 2018 @

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(Special Leave Petition (Crl.) No.9405 of 2017)

Reason:

Criminal Appeal No.1022 of 2018 @  
(Special Leave Petition (Crl.) No.9406 of 2017)

2

Criminal Appeal No.1000 of 2018 @  
(Special Leave Petition (Crl.) No.9904 of 2017)

Criminal Appeal No.1001 of 2018 @  
(Special Leave Petition (Crl.) No.9664 of 2017)

Criminal Appeal No.1002 of 2018 @  
(Special Leave Petition (Crl.) No.1283 of 2018)

Criminal Appeal No.1003 of 2018 @  
(Special Leave Petition (Crl.) No.1238 of 2018)

Criminal Appeal No.1004 of 2018 @  
(Special Leave Petition (Crl.) No.1192 of 2018)

Criminal Appeal No.1023 of 2018 @  
(Special Leave Petition (Crl.) No.1252 of 2018)

Criminal Appeal No.1024 of 2018 @  
(Special Leave Petition (Crl.) No.1286 of 2018)

Criminal Appeal No.1025 of 2018 @  
(Special Leave Petition (Crl.) No.1239 of 2018)

Criminal Appeal No.1005 of 2018 @  
(Special Leave Petition (Crl.) No.1327 of 2018)

Criminal Appeal No.1006 of 2018 @  
(Special Leave Petition (Crl.) No.1568 of 2018)

Criminal Appeal No.1007 of 2018 @  
(Special Leave Petition (Crl.) No.2966 of 2018)

Criminal Appeal No.1008 of 2018 @  
(Special Leave Petition (Crl.) No.3107 of 2018)

Criminal Appeal No.1009 of 2018 @  
(Special Leave Petition (Crl.) No.3087 of 2018)

3

Criminal Appeal No.1010 of 2018 @  
(Special Leave Petition (Crl.) No.3064 of 2018)

Criminal Appeal No.1011 of 2018 @  
(Special Leave Petition (Crl.) No.3041 of 2018)

Criminal Appeal No.1012 of 2018 @  
(Special Leave Petition (Crl.) No.3238 of 2018)

Criminal Appeal No.1013 of 2018 @  
(Special Leave Petition (Crl.) No.3814 of 2018)

Criminal Appeal No.1014 of 2018 @  
(Special Leave Petition (Crl.) No.4116 of 2018)

Criminal Appeal No.1015 of 2018 @  
(Special Leave Petition (Crl.) No.5128 of 2018)

Criminal Appeal No. 1017 of 2018 @  
(Special Leave Petition (Crl.) No.6707 of 2018 (D.No.25551/2018)

Criminal Appeal No.1016 of 2018 @  
(Special Leave Petition (Crl.) No.5870 of 2018)

#### JUDGMENT

Uday Umesh Lalit, J.

Leave granted in all the matters.

2. Since similar questions arise in all these matters, they are being disposed of by this common Judgment. The matters can be broadly classified in three categories. We have taken Criminal Appeal arising from Special Leave Petition (Crl.) No.9196 of 2017, Criminal Appeal arising from Special Leave Petition (Crl.) No.9029 of 2017 and Criminal Appeal arising from Special Leave Petition (Crl.) No.9409 of 2017 to be the lead matters representing each of those three categories. The facts leading to the filing of said appeals are set out in detail hereunder:-

A. Criminal Appeal @ SLP(Crl) No.9196 of 2017

3. Under an agreement dated 29.03.2014 entered into between the appellant and Bihar State Food and Civil Supplies Corporation Ltd. (hereinafter referred to as “the Corporation”) the appellant undertook to mill paddy procured from District Office of the Corporation as per terms and conditions mentioned in the agreement. Clause 2 of the agreement was as under:

“That the Second Party with a monthly milling capacity of 400 MT of paddy shall furnish a bank guarantee equivalent to the value of paddy issued to him by the First

Party for milling in the current procurement season and in case, he is issued an additional quantity of paddy for milling he shall to furnish an additional bank guarantee equivalent to the value of the amount of the additional paddy issued to him by the First Party. In case he is not capable of furnishing the above mentioned bank guarantee(s), he shall pledge unencumbered immovable property belonging to him in the name of District Manager, Kaimur of the same amount or more, as certified by the competent authority Circle Officer/Sub-Divisional Officer. In the prescribed manner, for the entire value of paddy as per his milling capacity. However it will be mandatory for the Second Party to provide a minimum bank guarantee as per the milling capacity enumerated in the table below:

Sl.No.	Milling Capacity	Minimum Mandatory Bank Guarantee
1	UP to 2 MT per hour	Rs.5 lakh
2	More than 2 MT and upto 5 MT per hour	Rs.10 lakh
3	More than 5 MT per hour	

The said bank guarantee of Rs. Five Lakh Rupees

(amount in words) issued in favour of the District Manager, Bihar State Food & Civil Supplies Corporation Ltd., Kaimur vide Serial No. at BG No.2696IG-002214 issued by P.N.B. Bank Akerhi Branch Mohania, Kaimur District has been submitted by the Second Party.”

4. The appellant had thus undertaken to furnish bank guarantee equivalent to the value of paddy issued to him. As per the concerned clause, in case the appellant was unable to furnish such bank guarantee, he could pledge unencumbered immovable property belonging to him in favour of the Corporation for the equivalent sum. In addition it was mandatory for the appellant to provide a minimum bank guarantee as per the milling capacity. Accordingly a bank guarantee on that count in the sum of Rupees Five Lakhs was furnished.

5. The procurement season in terms of the aforesaid agreement was 2013-14. However, it is the case of the Corporation that though the appellant was supplied 6000 quintals of paddy, he failed to return 3212.70 quintals of rice amounting to Rs.79.62 lakhs and thus the appellant misappropriated the aforementioned sum. A first information report was registered on 02.04.2015 vide Bhabhua P.S. Case No.151 of 2015 under Sections 409 and 420 of the Indian Penal Code. The appellant thereafter approached the High Court of Judicature at Patna seeking anticipatory bail which was granted to him vide order dated 30.07.2015.

B. Criminal Appeal @ SLP(Crl) No.9029 of 2017

6. Under an agreement dated 06.03.2013 entered into between the appellant and the Corporation, the appellant undertook to mill paddy lying at Kaimur Centre of the Corporation in terms of the

agreement. Clauses 2 and 3 of the agreement were as under:

“2. The Second Party has monthly milling capacity of 1 ton 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 for paddy for milling, he has to furnish further bank guarantee equivalent to 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 from him. The said bank guarantee of Rs. .... issued in favour of District Manager, Bihar Food & Civil Supplies Corporation Ltd. vide series No..... dated ..... 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 the quantity, he desired during the said procurement season in accordance with his monthly milling capacity but, he has no further bank guarantee for the value of the paddy, which, he takes for milling in case, he is not capable of furnishing bank guarantee, he had to pledge immovable property in the form of mortgage bond for amount or he can pledge immovable property for the entire value paddy which he takes for milling.

The property details so mortgaged must be certified to be in his own name by the competent authority either by circle officer of the block or SDO of the concerned sub division so that in case of default of second party or any deviation of paddy may be recovered.” According to the appellant since he had pledged his land valued at Rs.1.3 cores he was not required to furnish any bank guarantee. The procurement season for the aforesaid agreement was 2012-13.

7. On a written report that though the appellant had lifted entire quantity of paddy by 31.12.2013 he had not delivered any rice in terms of the agreement and that he had misappropriated 2401.48 quintals of rice amounting to Rs.51.99 lakhs, Kudra P.S. Case No.119 of 2015 was registered against the appellant for offences punishable under Sections 409 and 420 of the Indian Penal Code. On an application moved by the appellant, the High Court of Judicature at Patna vide judgment and order dated 24.07.2015 granted anticipatory bail to the appellant subject to his depositing 20% of the due amount within six weeks. According to the appellant, in compliance of such order the appellant deposited an amount of Rs.10.42 lakhs vide DD dated 22.01.2016.

C. Criminal Appeal @ SLP(Crl) No.9409 of 2017

8. Under an agreement entered into between the appellant and the Corporation on 11.2.2012 for the procurement season 2011-12, the appellant had undertaken to mill paddy lying at Bhabhua Centre of the Corporation on delivery of rice in terms of the agreement Clauses 2, 3 and 4 of the agreement were as under:-

“2. After delivery of rice to the Corporation proportionate paddy will be issued to the miller by Bihar State Food & Civil Supplies Corporation Ltd.

3. Rice will be accepted in the same Gunny bags in which the paddy is delivered by the Corporation. For the first consignment/lot, rice will be delivered by the miller in new SBT gunnies. The excess gunny bags will be returned by the miller and if retrained by the Miller of excess gunny bags (in which paddy supplier miller) will be deducted by the Corporation @ 60% of net wages price from the bills submitted by the miller.

4. The miller has already deposited Rs.50,000/- as security money through DD No.710733 dated 11.02.2012 of Rs. Fifty thousand in favour of District Manager, Bihar State Food & Civil Supplies Corporation Ltd.”

9. Since the rice was to be supplied at the time paddy would be given, unlike previous two illustrations, no bank guarantee or pledge was contemplated but deposit in terms of Clause 4 as security was given. On an allegation that the appellant was supplied 2306 quintals of paddy for the procurement year 2011-12 and the appellant had not returned 1545.02 quintals of rice amounting to Rs.28.9 lakhs, Kudra P.S. Case No.131 of 2015 was registered on 19.4.2015 for offences under Sections 409 and 420 IPC. The appellant was granted anticipatory bail by the High Court of Judicature at Patna on 16.07.2015.

10. Similar orders were passed granting anticipatory bail to number of persons against whom cases were filed by the Corporation. Those orders were questioned by filing special leave petitions by State of Bihar or the Corporation. These petitions came up before this Court on 28.02.2017 when following order was passed by this Court:

“Heard.

Permission granted.

Delay condoned.

These petitions have been preferred by the State of Bihar/Bihar State Food Civil Supplies Corporation against orders granting anticipatory bail/bail, in connection with cases, the facts of which are identical.

It has been stated by Mr. Siddharth Luthra, learned senior counsel appearing for the State/Corporation, that a sum of Rupees fifteen hundred crores in all has been allegedly misappropriated by the accused for which 600 FIRs have been filed. According to the case of the State, agreements for milling of paddy were entered into with different rice mills in pursuance of which paddy was handed over for milling but the rice from the milled paddy was not returned or was returned partly. Thus, there is misappropriation to a huge extent. In such circumstances, grant of anticipatory bail/bail will seriously hamper the investigation/trial resulting in huge loss to the State.

Our attention has been drawn to the Deed of Agreement. Clause 3 thereof provides for furnishing of bank guarantee for 26 the value of paddy, which is taken for milling, or for pledging of the immovable property of the value of the paddy.

There is also provision in clause 12 that in case of default of terms of agreement the bank guarantee can be forfeited and legal action initiated for recovery of the amount from the mortgaged immovable property.

The High Court has passed an order for deposit of 10 to 20 % of the amount, alleged to be involved in different cases for grant of bail/anticipatory bail.

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:

- (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 27 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 concerned authorities 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 concerned court.

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

Any other proceedings between the parties will remain unaffected by this order and the same can proceed in accordance with law.

The trial court/High Court will be at liberty to pass any further order which it considers appropriate, having regard to the individual fact situation or modify the above directions in exigencies of the situation.

The special leave petitions are disposed of accordingly. Pending applications, if any, shall also stand disposed of.”

11. In Criminal Appeal arising from S.L.P.(Crl.) No. 9196 of 2017, the Corporation vide its letter dated 18.03.2017 directed the appellant to furnish bank guarantee equivalent to the “defalcated sum” of Rs.79.62 lakhs. The appellant having failed, non-bailable warrant for arrest was issued on 29.05.2017. In the second matter i.e. in Criminal Appeal arising from S.L.P. (Crl.) No.9029 of 2017, the Corporation vide its letter dated 18.03.2017 directed the appellant to deposit bank guarantee for the “defalcated amount” of Rs.51.99 lakhs. On his failure, a non-bailable warrant of arrest was issued against the appellant on 22.07.2017. Similar such direction was issued by the Corporation in the third matter on 18.03.2017 for furnishing bank guarantee for the “defalcated sum” of Rs.29.40 lakhs. After the failure to comply, non- bailable warrant of arrest was issued on 30.05.2017.

12. Aggrieved, the appellants in all three cases and similarly situated persons approached the High Court of Judicature at Patna. The High Court by its common judgment and order dated 09.10.2017 in Crl. Misc. No. 29168 of 2017 and other connected cases, rejected the challenge. Paras 42, 43 and 45 of the judgment were as under:

“42. Thus, I see no merit in the submission of the learned counsel for the petitioners that the aforesaid order would not bind the petitioners, who were not parties before the Supreme Court.

43. So far as the point of pledging of property for the value of paddy in lieu of bank guarantee, and non-requirement of bank guarantee in such cases are concerned, they were already raised before the Supreme Court by the rice millers, which is evident from the plain reading of the order of the Supreme Court, but the Supreme Court did not accept their contention and passed order for deposit of bank guarantee.



45. So far as the liberty granted to this Court to modify the directions issued by the Supreme Court is concerned, as the order of the Supreme Court has already taken effect and the pre-arrest bail granted to the petitioners already stood cancelled, it is not permissible for this Court to modify the directions issued by the Supreme Court. May be that in appropriate case, having regard to the individual fact situation, in view of the liberty granted by the Supreme Court, this Court could have modified any condition if the petitioner(s) would have approached this Court in time. However, such a recourse would be impermissible once the order of the Supreme Court has taken its effect. I am also of the opinion that if the persons are aggrieved by the order of the Supreme Court regarding deposit of bank guarantee, the only course left to them is to approach the Supreme Court and till the time the order of the Supreme Court stands, the petitioners, whether they were party before the Supreme Court or not have to abide by its orders.”

13. The appellants in all three cases have approached this Court challenging the correctness of the view taken by the High Court. Similar such petitions have also been filed by other persons. Leading the submissions on behalf of said persons including the appellant, Mr. Kapil Sibal, learned Senior Advocate submitted:

(a) The order passed by this Court on 28.02.2017 did not contemplate furnishing of bank guarantee or keeping the bank guarantee alive in the sum equivalent to the alleged “defalcated sum”

(b) The bank guarantee was in terms of the stipulations contemplated by the agreement. Only such bank guarantee was to be furnished and kept alive.

(c) In cases where concerned millers had pledged their properties, the interest of the corporation was well secured and there could not be any insistence on furnishing of bank guarantee by way of additional security.

14. Appearing for the respondent-State, Mr. Ranjit Kumar, learned Senior Advocate submitted:

(a) About 1500 crores of public money was involved in all the matters. The rice in issue was part of public distribution system and all the millers were guilty of swindling public funds.

(b) In cases where bank guarantees were required to be given and kept alive in terms of the agreements and yet the millers had not furnished and kept alive such bank guarantees, the benefit of anticipatory bail/bail was rightly cancelled.

(c) In order to sub-serve public interest, the corporation be allowed to put to auction all the pledged properties and recover the defalcated sums.

15. The aforesaid three criminal appeals, the facts whereof are discussed in detail in preceding paragraphs show that there were three categories of matters. In the first, the miller was to give bank guarantee equivalent to the value of paddy. However in case of his inability to furnish such bank guarantee, the facility of pledging unencumbered immovable property was afforded to him. The miller was however required to provide minimum bank guarantee. In the second matter, the bank guarantee had to be given in respect of value of paddy. Here also an option was given to pledge immovable property in lieu of the requirement of furnishing of bank guarantee. Though there appears to be slight distinction in phraseology employed in the concerned clauses, the intent appears to be identical. It is also a matter of record that the appellant in the second matter had pledged his land valued at Rs.1.3 crores and was not required to furnish any bank guarantee. In the third matter, there was no requirement of furnishing any bank guarantee at all and all that the agreement insisted upon was furnishing of security.

The requirement of furnishing bank guarantee was thus not mandatory and an option was given to the miller to pledge his unencumbered immovable property.

16. The matters therefore lie in a short compass. The order granting anticipatory bail/bail to the millers was challenged by the State/Corporation in matters which came up before this Court on 28.02.2017. While declining to cancel such orders granting anticipatory bails/bail, this Court deemed it proper to impose certain additional conditions. The first condition was that, in all FIRs the concerned accused would ensure that bank guarantee was furnished and kept alive, failing which, the benefit of anticipatory bails/bail would stand cancelled. The reference to “Bank Guarantee” in said condition No.1 was to the obligation arising from the agreement entered into with each of the accused.

17. It may be noted here that prior to the passing of the order dated 28.02.2017, none of the orders passed by the High Court or this Court required furnishing of bank guarantee or keeping it alive in respect of the “defalcated sum”. The order passed by this Court on 28.02.2017 is quite clear. The reference to “Bank Guarantee” and the condition modulated in that behalf was one which the accused was obliged to and had undertaken to furnish in terms of the agreement. If according to the terms of the agreement and the benefit enjoyed by the concerned accused, he had already pledged unencumbered immovable property in the equivalent sum, there was no requirement to furnish and to keep alive additional bank guarantee. Therefore the Corporation was not justified in demanding that the millers must furnish bank guarantee in respect of “defalcated sum”. The trial court was also not justified in cancelling the facility of bail/anticipatory bail already enjoyed by the miller and in issuing non-bailable warrants.

18. However there are certain categories of persons, who were enjoined to furnish bank guarantee, in terms of their agreement, to keep such bank guarantee alive, had completely failed in that behalf. Such failure on their part was in complete derogation and violation of the order dated 28.02.2017 passed by this Court. In such cases the trial court was certainly justified in cancelling the facility of bail/anticipatory bail extended to such millers and to issue non-bailable warrants of arrest. There is one more category of cases where the millers in question were not parties to the proceedings in this Court which were disposed of by order dated 28.02.2017. The submission in that behalf made by

such millers that the condition imposed by this Court would not apply to them was rightly rejected by the trial court and we affirm the view so taken.

19. We now come to the last submission made by Mr. Ranjit Kumar, learned Senior Advocate. The idea behind requirement of furnishing bank guarantee and or pledge of unencumbered property was to ensure sufficient security in the hands of the Corporation. Going by the terms of the agreement, in case there be any failure on part of the concerned miller to discharge his obligations, the Corporation would certainly be entitled and justified to take appropriate steps to secure its interest either by encashing the bank guarantee and or by disposing the pledged properties in accordance with law. We therefore accept the submission and hold that the Corporation, in such cases, would be well within its rights to take appropriate steps in the concerned matters.

20. In the circumstances we direct:-

a) The expression “Bank Guarantee” used in condition No.1 as stipulated in order dated 28.02.2017 passed by this Court pertains to bank guarantee which the concerned miller 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.

b) 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 concerned millers 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.

c) The order dated 28.02.2017 passed by this Court would apply to every single case, irrespective whether the concerned miller was a party to the proceedings before this Court or not.

d) If any miller, in terms of the order dated 28.02.2017, had not furnished bank guarantee or had not kept it alive in terms of his obligations under the agreement, the facility of bail/anticipatory bail would not be available to him. The orders cancelling such facility stand confirmed and the challenge in that behalf is negated. All such millers shall be immediately taken in custody by the concerned Police.

e) We permit the Corporation to secure its interest either by invoking the bank guarantees wherever furnished and or by putting to auction the unencumbered immovable property pledged by the millers with it, after due process of law.

21. All the appeals stand disposed of in aforesaid terms, without any order as to costs.

.....J. (Abhay Manohar Sapre) .....J. (Uday Umesh Lalit) New Delhi  
August 13, 2018