

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.12320 of 2016

Arising Out of PS.Case No. -67 Year- 2016 Thana -BHAGALPUR KOTWALI District-
BHAGALPUR

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Yogesh Chandra Jha @ Yogendra Chandra Jha

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Jha--Advocate

For the Opposite Party/s : Mr. Dilip Kumar-(A.P.P.)

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

02 17-03-2016

Heard learned counsel for the petitioner as well as
learned Additional Public Prosecutor.

Petitioner, Yogesh Chandra Jha @ Yogendra
Chandra Jha being apprehensive over his arrest relating to
Kotwali (Adampur) P. S. Case no.67 of 2016 registered under
Sections 406, 420, 120(B), 467, 468, 471 of the I.P.C. has filed
instant petition in terms of Section 438 of the Cr.P.C.

Complaint Case No.37 of 2016 was filed on behalf of
complainant, Kumar Prabhakar, and the same was sent to the
concerned P.S. for registration and investigation whereupon
instant case has been registered, having an allegation that
petitioner along with Vivekanand and Pawan Ray had entered into
an agreement to sell 20 kattha of land of Khesra no.11, khata
no.30 lying at Mauza-Bansitkar on a consideration amount of



Rs.1,10,00,000/- (Rs. One crore ten lacs). It has also been alleged that accused persons had assured him that after receipt of the amount, sale deed will be executed and in token thereof, also received Rs.5,00,000/- in advance. The aforesaid document was effective only for a period of six months. The document was executed on 18.07.2014. It has also been disclosed that at different occasion, Rs. One crore ten lacs have already been paid against which, the accused persons got two sale deeds executed in his favour, the first one by Md. Fakhruddin dated 14.11.2014 with respect to 16.916 decimals and the second sale deed executed by Shahista Bibi relating to 8.4583 decimals of land. Furthermore, the first sale deed contains consideration amount of Rs.19,05,000/- while the second sale deed contains consideration amount of Rs.9,55,000/-. Then thereafter, repeatedly complainant had gone to the accused on that very score, but having frustrated at their end filed this case.

Contention on behalf of petitioner is that from the relationship amongst the parties, it is evident that it happens to be out and out a civil dispute and for that, no criminal case would lie. It has also been submitted at the end of the learned counsel for the petitioner that matter relates with calculation which, his client is ready to sort out in presence of the informant. Apart from this, it



has also been submitted that informant had himself admitted that two sale deeds of respective areas have already been executed in his favour, on account thereof, it could not be said that deed of agreement having effected amongst the parties was created with criminal intention to digest the amount. Therefore, none of the Sections is found applicable whereunder case has been registered. It has also been submitted that not even a single farthing has been paid to the petitioner and on account thereof, petitioner cannot be held responsible for any sort of misdeeds having perceived by the informant. So, it has been prayed that it happens to be a good case wherein petitioner should be granted an anticipatory bail.

On the other hand, learned Additional Public Prosecutor opposed the prayer.

Any agreement entered into by the parties can give colour of civil as well as criminal action. The only event which could be taken note of Court whether agreement was taken up under deceptive manner. If the agreement happens to be without criminal intention, then in that event, certainly the civil cause will replace otherwise apart from civil action, criminal prosecution is also found permissible.

Petitioner along with others were well known to the fact that they do not happen to be owner of the land and on

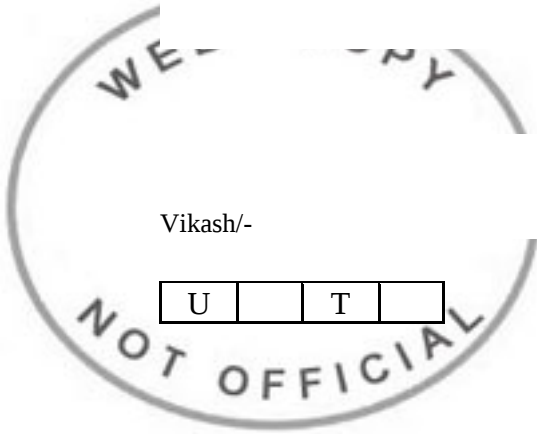


account thereof, their status, as is evident from the deed of agreement, happen to be that of broker. Petitioner has denied to have received a single farthing, but the documents itself suggest that apart from receiving Rs.5,00,000/- on the date of execution of document by the petitioner along with Vivekanand and Pawan Ray, at different occasions also payment has been received by his associates that means to say, Vivekanand as well as Pawan Ray. Considering the conduct and status of the respective parties, it cannot be said that money which was received at the end of Vivekanand and Pawan Ray was not for petitioner. Moreover, in the background of the fact that two sale deeds against receipt of aforesaid amount had already been executed in favour of informant.

That being so, I do not see it a fit case for grant of anticipatory bail. Hence, prayer of petitioner for anticipatory bail is rejected.

However, it is made clear that in case, petitioner surrenders before the learned lower Court and deposit residuary amount on his own after deducting total consideration amount shown in the two sale deeds dated 14.11.2014 executed by Md. Fakhruddin on consideration of Rs.19,05,000/- and second sale deed dated 01.12.2014 executed by Shahista Bibi on consideration

of Rs.9,55,000/-, then in that event, the learned lower Court will find it good ground to consider favourably.



(Aditya Kumar Trivedi, J)