

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No. 19038 of 2016

Arising out of P. S. Case No. - 23 Year - 2016 Thana - KOTWALI District - PATNA

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Kartikey Kumar, S/o Late Jagat Prasad Singh, Resident of Sheohar, P.S. Mokama, Distt. – Patna, presently residing at Flat No. 202, Tufail Residency, Frazer Road, P.S. Kotwali, District - Patna

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Shri P. K. Shahi, Sr. Advocate

For the Opposite Party : Mr. Pushpa Sinha, A.P.P.

For the Informant : Mr. Amar Jyoti Sharma, (In Person)

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CORAM: HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL ORDER

8 08-09-2016 Heard learned Senior Counsel for the petitioner and learned counsel appearing on behalf of the State. The informant is also present in person.

The petitioner is apprehending his arrest in connection with Kotwali P.S. Case No. 23 of 2016 registered for the offences punishable under Sections 147, 149, 452, 379, 387 read with Section 120B of the Indian Penal Code.

Case diary, in the present case, called for which has since been received.

Shri Shahi, learned Senior Counsel appearing on behalf of the petitioner submits that the allegation against the present petitioner is that he along with other co-accused persons came to the place of occurrence and after breaking open the lock



of the house of the informant entered therein. The said fact came to be informed to him by informant's guard present at the place of occurrence whereupon the informant reached his ancestral house situated at Boring Canal Road and identified the four persons named in the First Information Report which also includes the present petitioner. When the informant asked them the purpose of having entered his premises, the said accused persons became belligerent and on putting him into fear of death and threatening him otherwise also called a vehicle and took away all the household items which were at the said premises. Thereafter the petitioner along with others fled away.

Learned counsel for the petitioner submits that the entire allegation is false and fabricated and petitioner has been wrongly implicated in the case, as no occurrence had taken place on the said date. It is submitted that the name of the petitioner has been roped in, only out of vendetta and that there was a building agreement executed by two of the co-parceners who had given their lands in favour of certain parties for construction of commercial complex over the said premises. It is only the fact that the informant who has been resisting the bail application of the petitioner as well as other named co-accused persons the present case has been lodged out of sheer vendetta.



The informant who has appeared in person, however, submits that the petitioner was one of the key persons who had participated in the occurrence and it was right from the beginning, at his behest, the vehicle was called for and after putting the informant into fear of life, the petitioner along with other co-accused persons took away the entire house-hold belongings of the informant.

The learned counsel appearing on behalf of the State after perusal of the case diary submits that though the petitioner is named in the case diary, but there is no further cogent material to indicate that the present petitioner had, in fact, participated in the occurrence. It is further submitted that after investigation the case has been found true as against the petitioner and others under Sections 149, 427, 459, 380, 387 and 120B of the Indian Penal Code. It is, thus, evident that the petitioner along with others had clearly participated in the occurrence and, therefore, the case having been found true against the petitioner, he does not deserve anticipatory bail.

Responding to the aforementioned submissions advanced by the informant who has appeared in person and also the material which has come in the case diary, learned Senior Counsel appearing on behalf of the petitioner submits that the



ingredients of Section 387 of the Indian Penal Code cannot be attracted in the present case. So far as other Sections are concerned, learned Senior Counsel submits that the petitioner along with other co-accused persons had gone there on the basis of a development agreement which had been duly licensed by co-parceners, to take possession of the property. He further submits that the ingredients of Section 387 of the Indian Penal Code are not being present as the ingredients of Section 383 of the Indian Penal Code itself are not made out. Thus, the petitioner cannot be prosecuted under the said Sections. He further submits that other two, similarly, situated co-accused persons, namely, Ashish Kumar Halder and Sushil Kumar Pansari have been extended the privilege of anticipatory bail in Cr. Misc. No. 18314 of 2016 and Cr. Misc. No. 20343 of 2016 vide order dated 29.07.2016.

After considering all facts and circumstances and that other, similarly, situated co-accused have been extended the privilege of anticipatory bail, let the petitioner, Kartikey Kumar, in the event of his arrest or surrender before the Court below within a period of four weeks from the date of receipt/production of a copy of this order, be directed to be enlarged on bail on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial

Magistrate, Patna in connection with Kotwali P.S. Case No. 23 of 2016, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. It is made clear that in the present case the petitioner shall appear on submission of charge-sheet and make himself available before the trial Court as and when required and shall not absent himself from the trial Court on more than two dates without there being any sufficient cause. It is also made clear that one of the blood relatives of the petitioner shall be one of the bailors of the petitioner who shall furnish his address to the learned court below in case of change of address of the petitioner as and when necessary.

(Anjana Mishra, J.)

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