

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No 24529 of 2016

Arising Out of PS.Case No. -26678 Year- 2014 Thana -PATNA COMPLAINT CASE District-
PATNA

=====

1. Fulmati Devi @ Sanyukta Devi, Wife of Sudama Singh
2. Sudama Singh, Son of Rajendra Singh, Both residents of Village Dhenuki, P.S. Marhaura, District Saran, At Present residing at Flat No 103 & 104, Sant Parashray Garden, Adarsh Vihar Colony, Rukkanpura, PS Rupaspur, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Parasharay Builders having its registered office at A/10, Friends Apartment, Montessori School Lane, Boring Road, PS S K Puri, Distt.- Patna through its Proprietor Rupesh Kumar Son of Sri Sant Kumar Sinha
3. Indu Singh, wife of Late Ashok Kumar Prasad Singh, resident of Village + PO – Hakam, PS – Mahmadpur, District - Gopalganj

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr Pankaj Kumar, Advocate
For the Opposite Party/s : Mr Dashrath Mehta, APP

=====

CORAM: HONOURABLE MR JUSTICE DINESH KUMAR SINGH

ORAL ORDER

12 16-05-2017

Heard learned counsel for the petitioners, Opposite Parties No 2 and 3 and the State.

The petitioners are apprehending arrest in a complaint case in which process has been directed to be issued after cognizance being taken for offences punishable under Sections 467, 420/34 of Indian Penal Code.

The prosecution case, as per the complaint petition, is that the complainant, being a builder –cum- developer, entered



into a development agreement with petitioner No 1 Fulmati Devi @ Sanyukta Devi and her cousin Fakni Devi for construction of a multi storeyed apartment on 1 katha 18 dhurs of land appertaining to Khatas No 495 and 499, Survey Plot No 536, 538 (F7), 538 (F8) and 538 (F9), Thana No 20, Tauzi No 5560, total measuring area of 10,436 square feet out of which petitioner No 1 and her cousin's area was 2613 square feet. The petitioners and others were to get 40% of the constructed area and rest 60% constructed area fell in the share of the builder/developer. The complainant claims that Flat No A103 in the alleged Apartment, namely, Sant Parashray Garden Block was allotted to Captain Ashok Prasad Singh and consequently, the complainant made an agreement to sell in favour of Captain Ashok Kumar Prasad Singh who subsequently died and ultimately, the flat was transferred in the name of his wife Indu Singh, Opposite Party No 3 on 18.04.2013. After the registration, Indu Singh came in possession of the land in question and got electric connection in her name. Subsequently, petitioner No 1 claimed the allotment of Flat No A103 to her on the basis of a forged and fabricated document. Consequently, the complaint was filed wherein process has been directed to be issued after cognizance being taken under Sections 467, 420/34 of IPC.

It is submitted by the learned counsel for the petitioners that petitioner No 1 and her cousin Fekani Devi entered



into a development agreement with the complainant over the land in question for constructing multi storeyed building. Consequently, Sant Parashray Garden Apartment was constructed. The flat in question fell in her share and subsequently she applied for fixation of holding tax of the flat in question. It was fixed vide order dated 20.10.2013 that the petitioner was making payment of the holding tax and was being granted receipt for the same. Subsequently, the complainant approached petitioner No 1 for purchase of Flat No A103. Petitioner No 1 agreed to the offer of complainant for sale of flat in question for Rs 25,000,00/- and consequently four cheques were issued in favour of petitioner No 1 out of which three cheques were of Rs 5 lacs each and one cheque was of Rs 5,85,600/- while the remaining amount was paid in cash but the cheques got dishonoured as a result, petitioner No 1 repudiated the entire transaction. Subsequently, petitioner No 1 came to know that in her bank account, Rs 9 lacs have been transferred by the complainant. Then petitioner No 1 directed his banker to return the said amount and consequently the said amount was reverted to the account of the complainant. Hence, it is claimed that it is the complainant who played fraud with the petitioners.

Moreover, with regard to the dispute in question, Title Suit No 392 of 2016 is pending.



Counsel for the complainant Mr Rajesh Kumar Singh submits that the petitioners have not brought anything on record to suggest that Flat No A103 was ever allocated to the petitioners and if they got the holding created in their name, it was done fraudulently. The cheque got bounced not due to insufficient fund but due to non tallying of the signature. The flat in question has already been transferred in favour of Indu Singh but it has illegally been occupied by the petitioners who do not have any title over the land and unless the sale deed is annulled by a competent Civil Court, Indu Singh shall have a valid title over the flat in question.

It is submitted by learned counsel for Opposite Party No 3 Indu Singh that she is the worst sufferer. She has paid the considerable amount and she has neither been given the possession of the flat in question nor has the consideration amount been returned. Hence, she has become a prey to the nefarious design of the developer and the land owner.

Considering the rival submission of the parties, keeping in view the fact that the learned Additional District and Sessions Judge, Patna vide order dated 27.04.2016 passed in ABP No 353 of 2016 disposed of the anticipatory bail application of the petitioners on the ground that only summons have been issued and directed the learned Magistrate to consider the prayer for bail on surrender, while the order dated 07.07.2015 passed by the learned



trial Court suggests that bailable warrant of arrest was issued. The entire prosecution is based on breach of contract between the petitioners and the complainant and since the title suit is pending for the same cause of action, this Court is inclined to accede to the prayer for anticipatory bail of the petitioners and, accordingly, let the petitioners above named be released on anticipatory bail in the event of their arrest or surrender before the learned Court below within a period of 12 weeks from today on each of them furnishing bonds of Rs 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of Judicial Magistrate, 01st Class, Patna in Complaint Case No 26678 of 2014 subject to all conditions as laid down under Section 438 (2) of Criminal Procedure Code.

The bail bonds of the petitioners will be cancelled by the learned Court below if the petitioners default in appearance before the learned Court below for two consecutive dates.

However, it is made clear that this order will not amount to any opinion with regard to the title or possession of the flat in question.

(Dinesh Kumar Singh, J)

M.E.H./-

U		T	
---	--	---	--

