

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53526 of 2017

Arising Out of PS.Case No. -2020 Year- 2012 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Prabhash Kumar, S/o Sri Phuleshwar Yadav, Managing Director, M/S Prashambhi Design & Construction Pvt. Ltd., G-1 Prashambhi's Saryug Vihar, Goshai Tola, Patliputra Colony, Patna-800013.

.... Petitioner/s

Versus

1. The State of Bihar
2. Amrendra Kumar, S/o Shri B. N. Verma, at present posted as Sr. Manager (Projects), HUDCO, 2nd Floor, Block-B/2, Maurya Lok Complex, Dak Bungalow Road, Patna 800001.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Santosh Kumar Singh, Advocate

For the Opposite Party/s : Mr. Shyameshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

4/ 22-11-2017

Heard learned counsel for the petitioner and learned

APP for the State.

Petitioner apprehends his arrest in **Complaint Case No.2020-C of 2012** instituted for the offence under Section(s) 406/34 Indian Penal Code and Section 138 of the Negotiable Instrument Act.

Counsel for the petitioner has submitted that he was sanctioned loan by the HUDCO for construction of Saryug Vihar Apartment as mentioned, in detail, in the Complaint Petition. Installments became due with the HUDCO. Thereafter to liquidate the liability of the installments on the demand made by the HUDCO, this petitioner issued five cheque(s), as mentioned in para 5 of the Complaint Petition, out of which one of the



cheque on the presentation was honoured. Remaining three cheques amounting to Rs.22,00,000/-, Rs.25,00,000/- and Rs.25,00,000/- as mentioned at item nos.2, 3 and 4 in para 5 of the Complaint Petition, were dishonoured due to insufficient fund. Fifth cheque amounting to Rs.18,000/-, as mentioned at item no.5 of para 5 of the Complaint Petition, was never presented by the HUDCO for encashment.

Counsel for the petitioner has submitted that HUDCO has already initiated recovery proceeding under the SARFASEI Act. It has also filed necessary case before the Debts Recovery Tribunal by filing Original Application bearing No.204 of 2012 against the petitioner. HUDCO has claimed for initiation of proceeding against the entire liability of the loan, which will be apparent from Annexure-3, which is order of Debts Recovery Tribunal, Patna, passed in SARFASEI Appeal No.196 of 2012 filed by the petitioner. In the aforesaid order dated 02.11.2012, it was mentioned that notice of demand was issued to the petitioner on 03.02.2012 for total amount of Rs.2,50,49,198/- up to 23.01.2012. The petitioner was directed, as an interim measure, to deposit Rs.60 lacs, and thereafter Debts Recovery Tribunal has ordered to maintain status quo.

In this manner, in the year 2012 itself, SARFASEI proceeding as well as original application before the Debts



Recovery Tribunal, Patna, had already been initiated by the HUDCO for realization of entire liability of the loan.

In the facts and circumstances of the case, prayer of the petitioner for grant of anticipatory bail is allowed. In the event of surrender/arrest of the petitioner, named above, within six weeks from today in connection with **Complaint Case No.2020-C of 2012**, he shall be released on anticipatory bail on furnishing bail bond of `10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the **Smt. Ritu Kumari, Judicial Magistrate, 1st class, Patna**, subject to the conditions as laid down under Section 438(2) Cr. P. C. with further conditions: (1) bailors should be local having sufficient immovable property within the jurisdiction of the court concerned, (2) petitioner shall cooperate in the trial and shall be present on each and every date fixed by the court and absence on two consecutive dates without proper and reasonable reason will automatically cancel bail bond of the petitioner and (3) if petitioner tampers with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioner.

(Sanjay Priya, J)

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