IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.51922 of 2016

Arising Out of PS.Case No. -380 Year- 2016 Thana -KOTWALI District- PATNA

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Vishal Kumar Mishra @ Babloo, Son of Late Awadheshwar Prasad Mishra, resident of Mohalla-R/O Unit No. 207, Second Floor, Shashi Complex, Exhibition Road No. 1, P.S. Gandhi Maidan, District-Patna. Permanent resident of 28, Jangali Prasad Lane, Patna City, P.S. Chowk, District-Patna.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Arvind Kumar Mouar, Advocate.
For the State : Mr. Akhileshwar Dayal, A.P.P.
For the Informant : Mr. Ramakant Sharma, Sr. Advocate.

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

ORAL ORDER

8 11-10-2017 Heard learned counsel for the petitioner, learned A.P.P. for the State and learned senior counsel for the informant.

The petitioner is languishing in custody since 14.08.2016 in a case for the offence registered under Sections 467, 468, 420, 406 read with 34 and 120(B) of the IPC.

The prosecution story, in brief, is that the informant Rakesh Prasad Singh is the Managing Director of 'Aparna Housing & Construction Pvt. Ltd.,' and he came in contact with this petitioner and other co-accused Ajay Kumar Singh, who assured the informant to provide a piece of land situated in front of

Laxmi Complex, Boring Road, Patna. The petitioner and co-accused Ajay Kumar Singh told the informant that they had already got executed a deed of 'Agreement for Sale' in their favour from the owner of the land. It is further stated that the petitioner and other co-accused Ajay Kumar Singh told that they were Directors of 'A.V. R. Green Homes Pvt. Ltd.,' and gave a copy of 'certificate of incorporation' of the said company. They demanded Rs. 4 Crores for the said piece of land for paying it in advance to the owner of the land. The accused further assured to execute a sale deed in favour of the informant, whereupon the informant paid Rs. 3,88,85,000/- (Rupees Three Crores Eighty Eight Lacs and Eighty Five Thousand Only) to them through RTGS and in cash also. The accused did not execute a sale deed in the name of the company of the informant. It is also stated that on verification, the documents produced by the accused, found to be forged. The informant asked the accused to refund the amount received by them but they did not repay the same.

By order dated 26.04.2017, on the request of learned counsels for the parties, the matter was referred to the Mediation Centre, Patna High Court, Patna, so that a settlement could be arrived at between the parties. In the meantime, the petitioner was granted provisional bail in connection with the present case by the order of the Co-ordinate Bench, so that he could participate in the mediation.

A report has been submitted by the Mediator and the same is kept on the record at Flag-'B' which is as follows:-

"<u>MEDIATOR'S REPORT</u>
<u>Mediaton Proceeding No. 458 of 2017</u>
<u>(Arising out of Cr. Misc. No. 51922 of 2016)</u>

Vishal KumarMishra
Versus
The State of Bihar

On 10.05.2017, petitioner not appeared, his counsel appeared. Opposite party alongwith his counsel appeared and request for a time, matter adjourned for 17.05.2017.

On 17.05.2017, petitioner and opposite party both appeared with their counsel. Matter adjourned for 25.05.2017 at 1 P.M.

On 25.05.2017 both parties appeared with their counsel. Matter fixed for 05.06.2017 at 12.30 P.M. as a last chance.

A detailed discussion had taken place keeping core point that the dispute should be shorted out amicably among themselves, out of Court. Requests were made to them come with their "Probable Settlement Proposals".

But, they could not reach on a common platform. Hence, the present mediation failed, even after best efforts to settle it for long sitting, on different dates.

Sd/- Anshuman
(Dr. Anshuman)
Mediator
29.06.17."

It is submitted by learned counsel for the petitioner that the petitioner has got no criminal antecedent. The petitioner has falsely been implicated in the present case. The petitioner is simply a Director of the Company named as 'A.V.R. Green

Homes Pvt. Ltd.' to which a payment of Rs. 3,88,85,000/-(Rupees Three Crores Eighty Eight Lacs and Eighty Five Thousand Only) was made to the Company of the petitioner through RTGS. The petitioner being a Director has no liability on him. The said money was paid by the informant for purchase of land. The matter relates to civil dispute. No criminal liability is made out against the petitioner. It is further submitted that the documents of the land which was proposed to be sold to the informant were handed over to the informant by the petitioner and other co-accused persons.

It is submitted by learned counsels for the State and the informant that the petitioner is named in the F.I.R. An amount of Rs. 3,88,85,000/- (Rupees Three Crores Eighty Eight Lacs and Eighty Five Thousand Only) through RTGS and in cash also, was paid by the informant to the Company of the petitioner. The petitioner was the Director alongwith other co-accused. The said money was paid by the informant on assurance given by the petitioner and other accused persons that they had acquired the said piece of land situated at Boring Road, Patna in front of Laxmi Complex and he besides two others Directors would execute a sale deed in favour of the Company of the informant. On assurance made by the petitioner and other co-accused persons, the informant had transferred the aforesaid amount in the Company of the petitioner and other co-accused persons. Subsequently, they did not execute the sale deed, nor repaid the amount of Rs. 3,88,85,000/-(Rupees Three Crores Eighty Eight Lacs and Eighty Five Thousand Only) received towards an advance for executing the registered sale deed in favour of the Company of the informant. Thus by such act committed by the petitioner and other co-accused persons, a wrongful gain has been made to the accused persons and wrongful loss has been caused to the informant. It is further submitted by learned counsel for the State that Annexure-3 to the present application bears the Undertaking of this petitioner (Vishal Kumar Mishra). The relevant extract is as follows:-

> "And I agree to refund the total amount of Rs. 3,88,60,000/- (Rupees Three Crores Eighty Eight Lacs Sixty Thousand Only) as mentioned above with up-to-date interest @ 18% per Annum (Eighteen Percent Per Annum) if I fail to negotiate the said piece of Land and get registered in favour of M/S. Aparna Housing & Construction Private Limited within three months from today with the perfect owner/owners in perfect possession of the said land which has to be transferred and handed over with right title interest in favour of M/S. Aparna Housing & Construction Private Limited."

The prosecution has further relied upon paragraph no. 11 of the case diary which indicates that the payment of Rs.3,88,85,000/- (Rupees Three Crores Eighty Eight Lacs and Eighty Five Thousand Only) was made by the informant's Company in favour of the Company of the petitioner and other co-accused persons through RTGS and cash also.

Paragraph No. 38 of the case diary indicates that the petitioner and two other co-accused persons have made withdrawal of money from the account of the Company which was deposited by the informant. On verification, signatures of the petitioner and two other co-accused persons are there on the Cheques. Paragraph No. 45 of the case diary indicates that on verification of the documents in respect to the Company to which the petitioner and other accused persons are Directors, it is found that the petitioner and other co-accused persons are Directors in the said Company. Paragraph No. 58 of the case diary indicates that the amount of Rs. 3,88,85,000/- (Rupees Three Crores Eighty Eight Lacs and Eighty Five Thousand Only) which was deposited by the informant, out of which Rs. 2,08,53,709/- (Rupees Two Crores Eight Lacs Fifty Three Thousand Seven Hundred and Nine Only) has been withdrawn by Vishal Kumar Mishra (petitioner).

Co-accused (Ajay Kumar Singh) is said to have withdrawn Rs. 61,47,800/- (Sixty one Lacs Forty Seven Thousand and Eight Hundred Only) and co-accused (Rajiv Ranjan Singh) is said to have withdrawn Rs. 66,00,000/- (Rupees Sixty Six Lacs Only). It is further submitted that after withdrawal of the entire amount which had been transferred by the informant, there is Zero (O) Balance in the Bank Account of the accused Company. Paragraph No. 61 of the case diary indicates that the documents produced by the petitioner and other co-accused persons for the purpose of sale of land to the informant were found to be forged and fabricated.

Considering the aforesaid facts and circumstances, I find that the petitioner intentionally induced the informant and received Rs. 3,88,85,000/-(Rupees Three Crores Eighty Eight Lacs and Eighty Five Thousand Only) by giving false assurance that they have acquired the said property and further to execute a sale deed and to get it registered in favour of informant Company, and showing a forged document, thus committed the offences as alleged. Hence, the provisional bail granted to the petitioner by order dated 26.04.2017 in connection with Kotwali P.S. Case No. 380 of 2016, pending in the court of learned C.J.M. Patna, stands cancelled.

The petitioner is directed to surrender in the learned court below within the period of 08 (Eight) weeks. If the petitioner fails to do so, the learned court below will be at liberty to take all necessary steps under the law for appearance of the petitioner in this case.

With the aforesaid directions, the present application stands rejected.

(Sudhir Singh, J)

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