

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.31324 of 2017

Arising Out of PS.Case No. -495 Year- 2016 Thana -GAYA MUFFSIL District- GAYA

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Anil Kumar Singh, son of Bageshwar Prasad Singh, resident of village-Bhusunda, Police Station- Gaya Mufassil in the district of Gaya, presently residing at Rajiv Nagar, Road no. 9, Police Station Rajiv Nagar, in the town and district of Patna-24.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Prabhu Narayan Sharma

For the Opposite Party/s : Mr. Md. Anzarul Haque Sahara

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR
UPADHYAY
ORAL ORDER

2 14-07-2017

Heard learned counsel for the petitioner and the State.

The petitioner is apprehending arrest in Gaya Muffasil P.S. Case No. 495 of 2016 registered for the offences under Section 420 and 406 of the Indian Penal Code.

From perusal of the FIR, it appears that after receiving token amount and after executing Baibeyana, the petitioner played mischief with the informant and instead of executing the sale deed, he failed in his commitment and transferred half of the land to different purchasers on higher price.

Senior counsel for the petitioner submits that FIR is not a mode of execution of the agreement. In terms of the agreement the informant could have approached the competent Civil Court for specific relief under the Specific Performance of



Contract Act but instead the informant has adopted pressure tactics by filing the present case. He has referred to certain judgments of the Apex Court to substantiate that institution of criminal case to avoid civil liability is impermissible.

This submission cannot be looked into at this stage when the Court is considering application for grant of bail.

Counsel for the informant on the other hand, has referred to the agreement executed by the petitioner and submitted that from very inception the intention of the petitioner was to defraud the informant and therefore it is pure and simple case involving criminal liability.

Senior counsel appearing on behalf of the petitioner as well as senior counsel appearing on behalf of the informant may be right in their contentions with regard to the application of one or the other provisions of the Indian Penal Code including Section 406. At present the question is not as to whether the intention of the petitioner was to defraud the informant right from the very beginning or at subsequent stage or whether in filing of criminal case to enforce civil liability which can be gone into in appropriate proceedings before the competent court. The issue is whether the petitioner deserves anticipatory bail.

The petitioner has stated on affidavit in para-3 that he



has no criminal antecedent coupled with the fact that the present case involves the liability with reference to the amount received by the petitioner in relation to a land and execution of the agreement for transfer of land.

Counsel for the informant submits that the petitioner has after executing agreement for sale in favour of informant received payment and the aggregate payment made is approximately Rs. 35 lacs and odd but thereafter executed sale deed in favour of others on higher rate.

Without entering into the submission as to application of section 406 of the Indian Penal Code, one way or the other, this Court proposes to dispose of the application by granting anticipatory bail to the petitioner and at the same time safeguarding the interest of the informant.

On consideration of the peculiar facts and circumstances, let the petitioner, above named, in the event of his arrest or surrender within a period of one month from the date of production of this order, shall be released 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, Gaya in connection with Gaya Muffasil P.S. Case No. 495 of 2016, subject to the condition that the petitioner will not



transfer further land to any other which was subject-matter of the agreement between the petitioner and the informant until disposal of the case which is pending in the court below and further condition as laid down under Section 438(2) Cr.P.C.

The Court below is also directed to expedite the disposal of the case preferably within a period of nine months.

(Anil Kumar Upadhyay, J)

S.Pandey/-

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