IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.38187 of 2017

Arising Out of PS.Case No. -1627 Year- 2016 Thana -BHAGALPUR COMPLAINT CASE District-BHAGALPUR

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1. Ram Singar Tiwary @ Ram Sringar Tiwary Son of Late Jagdish Tiwary, R/o Village- English , P.S.- Sabour, District- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar .
2. Md. Khwaja, Son of Md. Jalil, R/o Village- Jahangira, P.S.- Sultanganj, District- Bhagalpur.

.... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Bibhuti Pandey, Sr. Adv.
		Mr. Ranjan Kumar Jha
For the O. P. No. 2	:	Mr. Indeshwari Mandal
For the State	:	Mr. Md. Sufiyan, APP

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CORAM: HONOURABLE MR. JUSTICE SANJAY KUMAR
ORAL ORDER

3 28-08-2017 Heard the learned counsel for the petitioner and the learned A.P.P. for the State.

The petitioner apprehends his arrest in connection with Complaint Case No. 1627 of 2016 instituted for the offences punishable under Sections 406, 420 and 504/34 of the Indian Penal Code.

The facts in brief is that the Opposite Party No. 2 filed a complaint case on the file of C.J.M., Bhagalpur alleging inter alia that this petitioner and other co-accused being Directors of Excella Mutual Benefit India Ltd. duped the petitioner and a large number of unemployed youth by appointing them as agency of their financial institution. The complainant in the capacity of agent collected money from a large number of people and got their accounts opened with the firm of this petitioner. The complainant had also deposited his personal money as well as from his family members. This petitioner shifted the said business in his residential-cum-cold storage campus at Sabour, Bhagalpur. During the business, this petitioner collected 40, 00,000/- from different investors. It has further been alleged that the company issued several cheques in favour of different investors, but the said cheques were retuned to the investors without any payment. The complainant and other investors met this petitioner and other Directors, but the company avoided from making payment and thereafter, the complainant lodged the case against this petitioner and the company for misappropriation the amount invested by the investors.

The learned counsel for the petitioner submits that this petitioner was the Director only for a period of three or four months and on account of his engagement in other works, he resigned the company on 22.12.2014, which was accepted by the company. The petitioner has no concern with the affairs of the company. It is the company, who collected money from the investors and so, this petitioner cannot be held liable for payment in any way. The allegation of cheating and committing breach of trust is not specific against the petitioner and no offence under Section 406 or 420 of the Indian Penal Code is made out against the petitioner.

The learned A.P.P. for the State as well as the leaned counsel for the Opposite Party No. 2 opposed the submissions.

A counter affidavit has been filed on behalf of the Opposite Party No. 2. It has been submitted that the petitioner has cheated a large number of people. The petitioner has wrongly mentioned that his company was registered with the Registrar of the companies, West Bhagalpur vide Corporate Identity No. U45400WB2010PTC155989. The petitioner in order to cheat the complainant and other investors had got his company registered also in Bihar vide Corporate Identity No. U65991BR2013PLC020423. The petitioner has entered into an agreement with other Director, namely, Raja Saha and as per agreement, the petitioner has taken all charges and responsibility as Director in-charge of the said company of five districts. The learned counsel annexed a copy of the agreement as Annexure-B to the counter affidavit. The petitioner is liable to pay an amount of Rs. 40,00,000/- to all the investors and so, he does not deserve anticipatory bail.

On perusal of F.I.R. and annexures annexed with the bail application as well as the counter affidavit, it appears that this petitioner is named in the F.I.R. and specific allegation is that he being one of the Directors had persuaded the complainant and other investors to invest money with his company. The petitioner is the sole Director from Bihar and he has provided space to run the said business in his cold storage campus. The complainant and other investors on the assurance of this petitioner had deposited money, which on maturity was not paid either to the complainant or other investors. A large number of certificates were issued under the signature of this petitioner. In the said certificates, an assurance was given to the investors that an amount of Rs. 1800/- money would be paid per month against the deposit of Rs. 1,00,000/- and the land of 100 sq. feet was also given by way of security. The certificate of registration annexed with the counter affidavit shows that the company of this petitioner was registered also at Bihar in order to raise confidence of the investors. By entering into agreement with other co-Director, this petitioner also took over the charges and responsibility of the company, which appears from the

Annexure-B of the counter affidavit.

Considering the specific allegation of misappropriate of about 40,00,000/- by duping the complainant and other investors, I am not inclined to extend him the privilege of anticipatory bail. The prayer is, therefore, rejected.

(Sanjay Kumar, J)

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