

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.61853 of 2018

Arising Out of PS. Case No.-45 Year-2018 Thana- MIRGANJ District- Purnia

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Gopal Choudhary, S/o Late Surendra Narayan Choudhary, R/o Vill.- Khagha,
P.S.- Mirganj, District- Purnia.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Ms. Nivedita Nirvikar, Adv.

For the Opposite Party/s : Sri J. N. Thakur, APP

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 06-10-2018 Heard learned counsels for the petitioner, informant and
learned APP for the State.

The petitioner is apprehending arrest in a case registered
for the offences punishable under Sections 419, 420, 504 and
506/34 of the Indian Penal Code.

The prosecution case got initiated on the basis of written
report of Gautam Kumar submitted to the Station House Officer,
Meerganj Police Station is to the effect that the petitioner, being
the neighbor of the informant, came along with his son Sivesh
Kumar on 30.05.2014 and expressed his desire to mortgage his
land for three years and in lieu of that he took Rs.85,000/- cash



from the informant. A document to that effect was prepared and it was signed by the informant and the son of the petitioner, while it was promised by the petitioner that if in future the land will be sold, it will only be sold to the informant. Further case of the informant is that the son of the petitioner, Sivesh Kumar on 11.06.2015 took altogether Rs. 1,85,000/- from the informant. Subsequently, the petitioner further mortgaged 3 bighas of land and in lieu of that a cheque of Rs. 1,40,000/- was given to the petitioner along with Rs.35,000/- in cash. Subsequently, the son of the petitioner further demanded Rs. 9,00,000/- per bigha as consideration amount for transfer of land, but the informant declined to purchase at such high rate which the informant is not capable to pay. Hence, the offer was made to purchase the land at the rate of Rs.6,00,000/- per bigha. An agreement to sale was entered into between the son of the petitioner and the informant. Ultimately, the son of petitioner transferred 0.90 decimal land in favour of the informant. But the transfer as per the agreement has not been made in view of the fact that son of the petitioner took Rs.6,65,000/- from the informant.

It is submitted by learned counsel for the petitioner that Rs.1,40,000/- was transferred in the account of the petitioner in lieu thereof three bighas of land is in the possession of the



informant. So far as the issue of transferring of Rs.4,60,000/- in the account of the son of the petitioner is concerned, the petitioner is not responsible for that. The agreement to sell is between the son of petitioner and the informant. Moreover, for a civil nature of dispute the criminal forum has been chosen for resolving the issue. A statement has been made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent.

It is submitted by learned counsel for the informant that the petitioner and his son, both have cheated the informant. Altogether Rupees Six Lac Sixty Five Thousand have been given to the petitioner and his son with an anticipation that the mortgaged land will be sold to the informant since there is an agreement to that effect between the informant and the son of the petitioner.

Considering the nature of accusation and even assuming the entire accusation if the petitioner and his son after agreeing transfer the land have not transferred the same, the accusation does not come within the preview of cheating. It appears that the informant in order to avoid the delay in getting the issue resolved through the suit for specific performance chose to recourse to criminal forum to get the relief quickly.



Hence, considering the accusation arising out of contractual nature of dispute coupled with statement made in paragraph no.3 of the petition that the petitioner is not having any criminal antecedent, let the above named petitioner be released on anticipatory bail, in the event of arrest or surrender before the learned Court below within a period of 12 weeks from today, on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned ACJM-I in connection with Mirganj P.S. Case No.45 of 2018, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Dinesh Kumar Singh, J)

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