

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.15953 of 2013

Arising Out of PS.Case No. -91 Year- 2012 Thana -RAMPUR District- GAYA

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Nitin Kumar S/9 Late Tarkeshwar Pd. Sinha, Resident of Flat No.-303, Nad & Subh Apartment South Bishar Tank Road, P.S.- Civil Lines, Dist.- Gaya.

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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With

Criminal Miscellaneous No.27232 of 2013

Arising Out of PS.Case No. -91 Year- 2012 Thana -RAMPUR District- GAYA

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Bhawna Sinha W/o Nitin Kumar, Resident of Flat No. 303, Nad & Subh Apartment, South Bishar Tank Road, P.S.- Civil Lines, Dist.- Gaya

.... Petitioner/s

Versus

The State Of Bihar

.... Opposite Party/s

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Appearance :

(In Cr.Misc. No.15953 of 2013)

For the Petitioner/s : Mr. Sanjeev Kumar

For the Opposite Party/s : Mr. Nagendra Pd.(App)

(In Cr.Misc. No.27232 of 2013)

For the Petitioner/s : Mr. Sanjeev Kumar

For the Opposite Party/s : Mr. Manoj Kumar 1 (App)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

ORAL ORDER

14/ 07-03-2018

Heard learned counsels for the petitioners,

opposite party no. 2 and the State.

The petitioners have renewed the prayer for anticipatory bail in a case registered for the offences punishable under Sections 406, 420, 341, 323, 379, 504 and 506/34 of the



Indian Penal Code.

The prosecution case got initiated on the written report of Dr. Abhay Simba dated 03.05.2012 submitted to the Station House Officer of Rampur P.S., to the effect that he booked flat no. 403 (super built up area 1856 sq. feet and two car parking, one in basement and other in open parking situated in front of the apartment) namely, Shubh Apartment situated in South Bishar Pond Road. The agreement was entered into between the informant Dr. Abhay Simba and petitioner Nitin Kumar, who is Developer and Director of Shubh Saurya Infrastructure Private Limited. The said agreement was executed on 13.01.2011. The informant claimed to have paid the entire cost of the said flat and apart from that petitioner Nitin Kumar also realized Rs.9,60,000/- from the informant for providing modular kitchen and modern bathroom fittings and the said flat was to be transferred by a registered deed by 31.07.2011 and possession was to be delivered. Despite repeated requests by the informant, neither the flat was transferred in his name, nor the possession was given. It is further alleged that on 03.05.2012 at 10.00 P.M. the petitioner Nitin Kumar along with two unknown persons came at the residence of the informant and threatened the informant, by putting a revolver on the temple of the



informant and snatched Rs.4200/- for transmitting a notice to the petitioner Nitin Kumar. It is also alleged that Bhawna Sinha, the wife of the petitioner Nitin Kumar, being the Office Bearer of Development Infrastructure Company realized Rs.30,48,000/- and failed to transfer the flat and hence, the case was lodged.

It is submitted by learned counsel for the petitioners that earlier the petitioners preferred Cr. Misc. No. 37951 of 2012 with a prayer for anticipatory bail but the said application was disposed of vide order dated 28.01.2013 since on wrong instruction it was submitted that on conclusion of the investigation final form has been submitted and the case has been found false and hence the petitioners are not having any apprehension. The present application has been filed since the final report has been submitted and petitioners have been charge sheeted. It is further submitted by learned counsel for the petitioners that for the same cause of action for non-transfer of the flat in question, in pursuance to the development agreement another case being Complaint Case No. 771 of 2013 was filed by the informant with accusation under Sections 406, 420 of the Indian Penal Code and Section 17(2) of the Bihar Apartment Ownership Act, 2006, but the process has been issued only under Section 17(2) of the Bihar Apartment Ownership Act, 2006. In



the said case petitioners preferred an application for anticipatory bail vide Cr. Misc. No. 3177 of 2015 wherein the petitioners were granted anticipatory bail vide order dated 21.05.2015 since parties had decided to resolve the issue. The operative portion of the order reads as follows:-

“The parties, however, have decided to finally resolve their disputes in the following terms:-

- (1) In the light of the decree passed by the 4th Subordinate Judge, Gaya in Title Suit No. 133 of 2013, the petitioner No. 1 shall get the Flat registered in the name of Opposite party no. 2 on payment of Rs.1,20,000/- and service tax as applicable as well as the registration fee, by tomorrow (22.5.2015) at Gaya.
- (2) The said amount of Rs.1,20,000/- has been calculated by petitioner No. 1 after adjusting the amount



which the Opposite party no. 2 was required to pay to him as part of the cost of the said Flat which was admittedly, payable to him.

(3) If the Flat is registered in the name of Opposite party no. 2 in terms of the proposal given by petitioner no. 1 before this Court, the Opposite party no. 2 will not further pursue the present Complaint Case No. 771 of 2013.

(4) The parties will not pursue any matter instituted against each other in any court with respect to dispute arising out of the said Flat Nos. 403 and 404.

It has been informed that the Opposite party no. 2 has also filed Rampur P.S. Case No. 91 of 2012 for the offences punishable under Sections 406, 420, 341, 323, 379, 504 and 506/34 of the Indian Penal Code and complaint case has been



filed by petitioner no. 1 also against the Opposite party no.2.

The parties have stated that they were closely related to each other from before and they will try to restore their relationship as existed earlier.

The petitioner no. 1 shall take steps for withdrawal of Misc. Appeal which has been filed against the decree passed by learned 4th Subordinate Judge, Gaya dated 21.7.2014 in Title Suit no. 133 of 2013.

In view of the fair stand taken by the parties, let petitioner no. 1 above named in the event of his arrest/surrender within four weeks from today in the Court below be released on bail on furnishing bail bond of Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of Sri P.K. Jha, learned Judicial Magistrate Ist Class, Gaya in Complaint Case No. 771 of 2013 (Trial No. 3027 of 2013), subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.”

It is further submitted by learned counsel for the petitioners that in pursuance to the aforesaid order petitioner no. 1 got registered transfer deed on 22.05.2015 and the informant is in possession of the same. Petitioner Bhawna Sinha is not a party to the agreement and hence, she has maliciously been



dragged in the present case.

However, learned counsel for the informant submits that this is not in dispute that both the complaint and the police case were lodged for the same cause of action and also does not dispute that both the issues have been resolved earlier on certain terms incorporated in order dated 21.05.2015 and the flat has been transferred in favour of the informant and informant came in possession of the same and it was the case of the informant that petitioner Nitin Kumar took Rs.9,60,000/- for providing modular kitchen and modern both room fittings, but the same has not been done. Hence, the petitioners may be directed to construct the kitchen and bath room, as was agreed by them.

However, it is submitted by learned counsel for the petitioners that the agreement was arrived at in the complaint case on the basis of the decree passed in Title Suit No. 133 of 2013. The petitioner has not disputed that the terms of agreement stipulated in the order passed by a co-ordinate Bench of this Court is in complaint case filed for the same cause of action and with similar accusation to that of police case.

Considering the rival submissions of the parties, keeping in view the fact that both police case and complaint case were filed for the same cause of action, in



complaint case on certain terms and conditions the petitioners were granted anticipatory bail, it is not the case of the informant that the terms and conditions have not been complied with. Moreover, the matter was referred to the Mediation Centre of the Patna High Court vide order dated 23.10.2013 and the report of the Mediator dated 17.02.2014 at Flag 'P' suggests that the issue could not be resolved through the process of mediation. Hence, in view of the fact that for the same cause of action the petitioners were granted anticipatory bail in complaint case, let the above named petitioners be released on anticipatory bail in the event of arrest or surrender before the learned court below within a period of twelve weeks from today, on furnishing bail bonds of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Gaya in connection with Rampur P.S. Case No. 91 of 2012, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Dinesh Kumar Singh, J)

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