

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.9050 of 2018

Arising Out of PS.Case No. -208 Year- 2017 Thana -BIKRAMGANJ District- SASARAM
(ROHTAS)

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1. Srikant Singh, Son of Mithilesh Singh, Resident of Village- Mahiyarpur
Rupaspur, Police Station- Rupaspur, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Singh, Adv

For the Opposite Party/s : Mr. Rajeev Nayan, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

12 10-09-2018

Heard learned counsel for the petitioner, learned

counsel for the informant as well as learned APP.

2. Petitioner has asked for pre arrest bail as
provided under Section 438 CrPC in connection with Bikramganj
PS Case No. 208/2017.

3. It has been urged on behalf of learned counsel for
the petitioner that during relevant period the informant was given
management of transport business on account of illness of wife of
petitioner. He was also directed that from the income, the
installments against the loan provided by the concerned bank for
purchase of vehicle in question be deposited which was
accordingly complied with and that happens to be the reason
behind presence of deposited slip as Annexure of the written
report. It has also been submitted that admittedly petitioner



happens to be owner of vehicle, though with some explanation at the end of informant but the fact remains that the vehicle in question is under possession of the petitioner. That being so, prima facie case leans in his favour whereupon, petitioner is entitled for anticipatory bail.

4. Apart from this, it has also been submitted that the forged and fake agreement having been advanced at the end of informant has been properly questioned over its genuineness and that happens to be the reason behind that by so many order the court has directed the Investigating Officer to take signature of the petitioner and get it compared with signature having over so alleged forged and fabricated document (agreement) which the Investigating Officer has taken recourse of but the FSL expert did not oblige at one pretext or the other and still, the expert is not inclined to compare his signature rather, is asking for the document containing signature of the petitioner which, the petitioner is unable to furnish. It has also been submitted that in the background of admitted position of petitioner being owner, vehicle being under his possession, then in that circumstance, till the genuineness of the forged and fabricated agreement, is properly ascertained and for that, trial is properly conducted, the claim and counter claim suggest it to be civil cause and in the aforesaid



background, petitioner is not only entitled for anticipatory bail rather instant prosecution appears to be legally not sustainable.

5. It has also been submitted that there happens to be no discloser at the end of informant that keeping control over the bus for more than two years what income he had incurred therefrom, save and except whatever been deposited as installment, all were taken by the informant and so, it could not be said that he has not properly been reimbursed for the service rendered by him in the background of the fact that both are distantly related. So submitted that it is a fit case whereunder, petitioner be allowed to avail opportunity as provided under Section 438 CrPC.

6. Learned APP assisted by learned counsel for the informant has vehemently controverted the submissions having been made on behalf of learned counsel for the petitioner. It has been submitted at their end that from the averment of the bail petition as well as submission having been made on behalf of learned counsel for the petitioner, it is an admitted fact that the bus in question was given under control of informant. It has been ascribed under para-13 that the aforesaid entrustment was under the garb of ailment of wife of the petitioner but to justify the same, no document has been filed. The bus was not under custody of informant for a day or a month rather it continued for years



together and that itself speaks otherwise probabalizing the case of the prosecution, more particularly, in the background of the fact that monthly installment having been paid at the end of informant irrespective of income out of plying of the bus. Furthermore, it has also been submitted that at an initial stage, petitioner had completely denied with regard to existence of any kind of agreement but, when the court had directed the Investigating Officer to procure the original deed of agreement and then got the signature of the petitioner compared and for that, so many orders were passed which were frustrated at the end of the expert of FSL who are insisting upon presence of document having signature of the petitioner since before and the same has not been filed as yet at his end. Apart from this, it has also been submitted that violation of terms and condition of an agreement will lead ultimately to a civil cause but when the negotiation is found flavoured with deception, misrepresentation, fraudulent intention, then in that circumstance, certainly the criminal offence is made out and for that, prosecution is justified. So submitted that instant prosecution happens to be legally maintainable and perceiving the conduct of the petitioner inconsonance with the allegation petitioner does not deserve grant of anticipatory bail.

7. On 16.07.2017 the written report was filed



against the petitioner by the informant disclosing therein that accused, Srikant Singh happens to be his distant relative who also possesses a bus bearing registration no. BRO2Q-6733. It has further been disclosed that Srikant Singh requested him to take control over the bus as, he is unable to properly manage the same and on account thereof, he finds himself incapable to deposit the monthly installment against the loan borrowed from the bank and at that very time, it has also been disclosed that after full payment of loan amount either he will transfer the ownership or will repay the amount along with interest. Putting belief over undertaking of the petitioner, he had deposited Rs. 6,54,000/- in the bank against the loan including interest. There also happens to be an agreement relating to sale concerning the aforesaid bus. Then thereafter, he requested the accused, Srikant Singh to transfer the ownership of bus as per agreement otherwise amount be paid along with interest. For this, he asked for 15-20 days' time and during midst thereof, he took control over bus in question on 26.10.2016 on the pretext that he along with his family members were to go to Rajrappa. Since thereafter, he approached the accused so many times for getting the matter amicably sorted out but on one pretext or the other, he avoided the same. Then thereafter, filed a petition before A.S.P., which was duly inquired and the allegation



whatsoever attributed at his end, was found to be true. Again it was inquired into and the allegation was found correct.

8. From para-13 of the bail petition, it is evident that in the background of ailment of wife of petitioner, custody of bus having been transferred in favour of informant is found admitted one. No document has been filed to support that petitioner's wife continued with severe ailment for more than two years. The other paragraphs right from para-8 to 12, again there happens to be admission at the end of petitioner on that very score but, there happens to be absence at the end of petitioner that he had any time inquired about the income expenditure and further, whether the installment having been deposited at the end of informant, was properly meted out from the income after plying the bus. The annexures annexed with written report, receipt of deposit of installment containing signature of the informant, is not at all denied. It is further evident from the record that taking into consideration the submission having at the end of petitioner, Investigating Officer was directed to take original deed of agreement from the informant which he did, that means to say, presence of document is there and the cumulative effect speaks otherwise than the fair conduct of the petitioner.

9. That being so, petitioner does not deserve



anticipatory bail. Prayer is rejected.

10. Petitioner is directed to surrender before the learned lower court within four weeks with a prayer for regular bail which the learned lower court will consider without being influenced by the instant order.

(Aditya Kumar Trivedi, J)

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