IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.49953 of 2017

Arising Out of PS.Case No. -523 Year- 2015 Thana -KOTWALI District- PATNA

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Shyam Sharma, S/o S.N. Sharma, Resident of B/44, Jaina Tower, P.s.-Janakpuri, District-Delhi

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mithlesh Kumar Gupta, Advocate

For the Opposite Party/s : Mr. Chandra Bhushan Prasad, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL ORDER

5 29-01-2018 Heard learned counsel for the petitioner and the State.

The petitioner apprehends his arrest in **Kotwali P.S. Case No. 523 of 2015, G.R. No. 6313 of 2015** instituted for the offence under Sections 409 and 420/34 of the Indian Penal Code.

As per written report the petitioner being the Director of Suparas Homz Pvt. Ltd. received an amount of Rs.15,75,000/- from the informant Birendra Kumar and his son Arun Kumar for allotment of two Plots under buy-back agreement as mentioned in the agreement which is part of the First Information Report. The petitioner also issued five post dated cheques in the name of informant towards payment of interest amount as mentioned in the agreement. The informant presented some of these cheques in Bank for realisation on the due date but the cheques were dishonoured due to insufficient fund in the account of petitioner.

Learned counsel for the informant has appeared and submitted that two separate agreements were entered into between Suparas Homz Pvt. Ltd. and the informant and his son. The petitioner is ready to execute sale deed with regard to land mentioned in the agreement on payment of due consideration amount by the informant, but informant is not ready for same and he wants to take amount of interest from the petitioner.

From the allegation in the written report it appears that this petitioner being the Director of Suparas Homz Pvt. Ltd. on the assurance to the informant of giving good return, received an amount of Rs.15,75,000/- by different cheques with regard to plots as mentioned in the buy-back agreement, but the petitioner neither executed sale deed with respect to those lands nor paid the amount of return as per agreement, made at the time of investment of the money by the informant and his son. The petitioner also issued five post dated cheques in favour of complainant to assure the complainant of the commitment of buy back agreement and secure the same. It is further alleged that when some of these cheques were presented in the Bank, on the due date, they got dishonoured on account of insufficient fund in the account of petitioner.

Learned counsel for the petitioner has submitted that there is arbitration clause in the agreement, and no criminal offence is made out. It has further been submitted that co-accused Narayan Thakur and Priya @ Priya Ranjan have already been granted anticipatory bail by a coordinate Bench of this Court vide order dated 27.6.2016 passed in Cr. Misc. 11603 of 2016.

From perusal of the order dated 27.6.2017 it appears that co-accused Narayan Thakur and Priya @ Priya Ranjan have been granted anticipatory bail by a coordinate Bench of this Court on the ground that they were employees of the company whereas this petitioner is Director of the Company and he has received the entire amount and has committed fraud with the informant.

Therefore, this Court is not inclined to grant anticipatory bail to the petitioner.

Prayer for anticipatory bail of the petitioner stands rejected.

Petitioner may surrender before the court below and make prayer for regular bail.

(Sanjay Priya, J)

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