

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.21702 of 2018

Arising Out of PS.Case No. -1435 Year- 2016 Thana -GAYA COMPLAINT CASE District- GAYA

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Parmeshwar Nath, S/o Ram Bachan Ram, R/o Vill.- Mahuar, P.S.- Sahpur,
District- Bhojpur, Presently Posted as Nazir, Guraru Anchal, P.S.- Guraru,
Distt.- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Shilbhadra Kumar S/o Late Naurangi Das, R/o Village+ P.O.- Mokama,
P.S.- Mokama, District- Patna (Retired).

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sheo Jee Mishra, Advocate.
For the informant : Mr. Kalyan Shankar, Advocate.
For the State. : Mr. Indra Kumar Singh, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

3 09-05-2018 Heard learned counsel for the petitioner, learned
counsel for the informant and the State.

The petitioner apprehends his arrest in **Complaint**
Case No. 1435 of 2016 instituted for the offence under Sections
420, 323 and 379 of the Indian Penal Code.

It is alleged in the complaint petition that complainant
gave loan of Rs.7,40,000/- to the petitioner by Cheque on
22.04.2014 with assurance that he will return the amount within
two months. The petitioner deposited the aforesaid cheque in his
account and clearance was made. Thereafter, the complainant
made request with petitioner after two months to return the money



but he refused to do so and, thereafter, on 22.09.2014, the instant complaint was filed.

Learned counsel for the petitioner has submitted that the aforesaid amount was given to the petitioner by the complainant for purchase of land. The vendor Daulati Devi has executed sale deed in favour of petitioner (Annexure-3) on 28.04.2014 just after four days of giving the cheque by the complainant to the petitioner. Daulati Devi has filed affidavit (Annexure-5) stating that she has received the amount of Rs.8,00,000/- for the aforesaid land from this petitioner and thereafter she has executed sale deed with respect to the land in favour of the complainant. Similarly, the brother of Daulati Devi namely, Naresh Yadav has also sworn affidavit which has been enclosed as Annexure-6.

Learned counsel for the complainant has appeared and submitted that the instant complaint has been filed after delay because petitioner used to give assurances that he would return money but he did not do so. The complainant has contradicted the statement made on behalf of the petitioner that sale deed (Annexure-3) was executed by Daulati Devi in favour of the complainant after taking money from the petitioner in cash which was given by the complainant to the petitioner by Cheque on



22.04.2014. It has further been submitted that consideration money on sale deed dated 28.04.2014 (Annexure-3) has been mentioned Rs.4,00,000/- whereas Daulati Devi has stated in affidavit that she has received an amount of Rs.8,00,000/- as consideration money for executing the aforesaid sale deed.

This Court is of the view that the aforesaid submission is disputed question of fact which can be adjudicated in trial.

A counter affidavit has been filed on behalf of the informant wherein he has enclosed affidavit of Naresh Yadav in which Naresh Yadav has stated that Complainant has paid Rs.7,00,000/- to the petitioner for purchase of land and Rs.40,000/- for registration amount.

Be that as it may, this Court is of the view that the complaint case has been filed after inordinate delay and there is no any valid explanation for filing the complaint case after such a long delay. There is civil remedy available to the complainant for recovery of the amount in question.

Considering the facts and circumstances of the case, prayer for anticipatory bail of the petitioner is allowed. In the event of surrender/arrest of the petitioner, named above, within six weeks from today, in connection with **Complaint Case No. 1435**



of 2016, he shall be released on anticipatory bail on furnishing bail bond of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned **Additional Chief Judicial Magistrate-XI, Gaya**, subject to the conditions as laid down under Section 438 (2) Cr. P.C. with further conditions (1) bailors should be local having sufficient immovable property within the jurisdiction of the court concerned, (2) petitioner shall cooperate in the trial and shall be present on each and every date fixed by the court and his absence on two consecutive dates without proper and reasonable reason will be liable to cancel his bail bond and (3) if petitioner tampers with the evidence or the witnesses of the case, in that case, prosecution will be at liberty to move for cancellation of bail of the petitioner.

(Sanjay Priya, J)

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