IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15052 of 2019

Arising Out of PS. Case No.-535 Year-2018 Thana- MOHANIYA District- Kaimur (Bhabua)

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1. MURLI PRASAD KESARI, S/o Ramji Prasad Kesari, Resident of Village and P.o - Kauri Ram , P.S- Mohania Distt.- Kaimur (Bhabhua)
2. Sunil Prasad Kesari @ Sunil Kumar Keshri, S/o Ramji Prasad Kesari, Resident of Village and P.o - Kauri Ram , P.s- Mohania Distt.- kaimur (Bhabhua)

... ... Petitioners

Versus

1. THE STATE OF BIHAR
2. The Branch Manager, Punjab National Bank, Aukauri, P.S.- Mohania, Distt.- Kaimur (Bhabhua)

... ... Opposite Parties

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with

CRIMINAL MISCELLANEOUS No. 15886 of 2019

Arising Out of PS. Case No.-535 Year-2018 Thana- MOHANIYA District- Kaimur (Bhabua)

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ANAND PRASAD KESARI, S/o Ramji Prasad Kesari R/o Village and P.O. - Kauri Ram, P.S.- Mohania, Distt. Kaimur (Bhabhua)

... ... Petitioner

Versus

1. THE STATE OF BIHAR
2. The Branch Manager, Punjab National Bank, Aukauri, P.S. - Mohania, Distt.- Kaimur (Bhabhua)

... ... Opposite Parties

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Appearance :
(In both the cases)
For the Petitioner/s : Mr. Yogesh Chandra Verma, Sr.Advocate
Mr.Satyendra Prasad Singh, Advocate
For the Opposite Party/s : Mr.Dashrath Mehta, APP
For Punjab Nation Bank : Mr. Kumar Priya Ranjan with Mr. Niraj Kumar

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CORAM: HONOURABLE MR. JUSTICE VINOD KUMAR SINHA
ORAL ORDER

3 03-05-2019 Since both the cases arise out of the same P.S. case number, they have been heard together and are being disposed of by this common order.

The petitioners in both the cases seek bail in anticipation of their arrest in connection with Mohania P.S.Case No. 535 of 2018, registered for the offences under Sections 409, 420, 467, 468, 471 and 34 of the Indian Penal Code.

Prosecution case as per FIR is that petitioner Anand Prasad Kesari has applied for loan of Rs.25 lacs on 28.10.2010 and accordingly CC loan was given in the name of his firm, namely, Keshri Polisher Mill and further a loan account was opened in which petitioner Murli Prasad Kesari was the guarantor. The aforesaid amount was enhanced at the request of of the petitioner Anand Prasad Kesari to Rs.50 lacs on 8.12.2011 and petitioners Murli Prasad Kesari and Sunil Prasad Kesari became the guarantors and later on it further appears that CC amount of Rs.50 lacs was enhanced to Rs.75 lacs in the year 2014 at the request of the petitioner Anand Prasad Kesari. As per the FIR the loan amount was running successfully but after some time the transaction in the amount was irregularized, on which the Bank has informed in writing and orally to improve the loan. However, as per guidelines of the Reserve Bank of

India on 29.3.2018 the account was termed to be as NPA and interest on the loan was stopped. Further case is that thereafter the Bank proceeded for recovery of money as per SARFESI Act. However, the Bank has been informed that the stock which was available in the shop of the petitioner Anand Kumar Kesari which was given on Hypothecation without any information to the Bank has disposed of and thus the loanee as well as the guarantor with a common intention has committed fraud in order to benefit themselves and to harm the Bank has been misappropriated. It is further alleged that the property which has been mortgaged to the present Bank has also been mortgaged to other Banks.

Submission of learned counsel for the petitioners Murli Prasad Kesari and Sunil Prasad Kesari is that they are only guarantors and the Bank after verification on different stags found the documents genuine and as such they have no liability now. On the other hand, submission of petitioner Anand Prasad Kesari is that no fraud was committed in this case as he was paying the loan earlier and even according to the Bank the loan was running successfully and further he has informed about the property being mortgaged to another

Bank also which valued at more than one crore rupees which was more than the amount to be claimed by the Bank but in spite of that a case has been lodged.

However, learned counsel for the petitioners in both the cases has submitted that they are still ready to liquidate the loan if some reasonable time is granted to them.

Heard learned counsel for the Punjab National Bank and learned APP, who has no objection if the amount is being paid even on some instalment and submitted that at least 25% of the amount to be deposited first and as per his instruction at present Rs.79,64,321 + up-to-date interest and other charges is dues against the borrowers.

In such view of the matter, this application is disposed of with a direction to the petitioners to deposit 25% of the amount due in the Bank within a period of eight weeks produce a certificate to that effect in the court below. The court below on production of such certificate shall release the petitioners in both the cases on provisional bail for a period of five months. During that period the petitioners have to deposit rest of the amount to the Bank, 1/5th of the rest of the amount in first week of every month and deposit the certificate to the court and on failure to deposit any of the instalments the bail bonds of the petitioners shall be cancelled and once the total amount is deposited, the provisional bail of the petitioners shall be confirmed. It is needless to say that the aforesaid deposit shall be subject to the result of the case.

(Vinod Kumar Sinha, J)

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