

Arising Out of PS. Case No.-26475 Year-2014 Thana- PATNA COMPLAINT CASE District- Patna

... .. Petitioner

Versus

1. The State of Bihar
 2. Smt. Dhanarajia Devi Wife of Moti Lal Singh Resident of House no.3,
Kailash Enclave, Shivpuri, P.S.- Shastri Nagar, District- Patna
- Opposite Parties

For the Petitioner : Mr.Dhirendra Kumar Singh
For the Opposite Party State: Mr. R.B. Roy 'Raman', APP
For the Complainant : Mr. Binod Kumar Sinha

ORAL ORDER

Heard learned counsel for the parties.

This application for anticipatory bail arises out of Complaint Case No. 26475(C) of 2014 of 2018 for the offence punishable under Section 468 of the Indian Penal Code.

It transpires from the complaint petition that allegedly there was some agreement to sale between the complainant and the petitioner. It is alleged that the petitioner had issued certain cheques in favour of the complainant against payment of the consideration money. The said cheques got subsequently returned on being presented to the Bank on the ground that the petitioner had instructed the Bank 'stop payment'. This is not in dispute that the complainant has not



executed sale deed in respect of the land in question in favour of the petitioner.

It has been submitted on behalf of the petitioner that a title suit is already pending before Sub-Judge, Barh, in respect of the same transaction.

Learned counsel appearing on behalf of the petitioner has submitted that the complainant has filed five complaint cases arising out of similar transaction and at least in one case, being Complaint Case No. 3041(C) of 2013, the order taking cognizance has been quashed by this Court by an order dated 25.07.2019 passed in Cr. Misc. No. 11520 of 2015 exercising power under Section 482 of the Code of Criminal Procedure. A copy of the said order has been brought on record by way of Annexure-11 to the supplementary affidavit filed on behalf of the petitioner.

Learned counsel appearing on behalf of the petitioner has also argued that the allegations made in the complaint petition do not make out any criminal offence and it is mainly because of civil dispute between them that a false complaint case has been lodged.

Learned counsel appearing on behalf of the complainant has vehemently opposed the prayer for bail and has



submitted that the petitioner has criminal antecedent inasmuch as he has been accused in at least 25 criminal cases.

Learned counsel appearing on behalf of the petitioner in response to the said submission has contended that in most of the cases, the petitioner has been acquitted and the complainant herself has filed five cases, which arise out of civil dispute.

Learned counsel appearing on behalf of the complainant has, however, not disputed the fact that nature of allegation, which is there in the complaint petition is similar to the allegations made in the Complaint Case No. 3041 of 2019.

The order taking cognizance has been quashed by a co-ordinate bench of this Court by a judgment and order dated 25.07.2019 passed in Cr. Misc. No. 11520 of 2015 on the ground that the criminal prosecution of the petitioner for the offence under Section 420 of the Indian Penal Code was bad in law. Paragraph 18 and 19 of the said judgment is being reproduced hereinbelow : -

“18.In the case in hand, the learned Magistrate appears to have passed the order of cognizance in casual manner without looking at the admission in complaint petition that the cheques issued by the petitioner were not for payment of any outstanding due of the complainant nor the conduct of the parties reflects that the petitioner cheated to the complainant, inasmuch as the complainant did not



execute the sale deed in favour of the petitioner in pursuance of the agreement and if the sale deeds were executed by the complainant in favour of Devendra Kumar at the dictate of the petitioner, the three sale deeds, speaks that entire consideration money was already received by the complainant. Therefore, the most important ingredient of cheating i.e. fraudulent and dishonest inducement of any person to deliver any property to any person is not made out in the present facts and circumstances of this case. If the petitioner would have assured payment of consideration money after execution of the sale deed, it might have been argued that the intention of the petitioner was fraudulent and dishonest. Once the sale deed speaks that entire consideration money was already paid, the ingredients of the aforesaid offence goes away. Hence, criminal prosecution of the petitioner for offence under Section 420 of the Indian Penal Code is also bad in law.

19.This Court cannot allow the abuse of the process of the Court, in exercise of power, under Section 482 Cr.P.C. Hence, the impugned order and entire criminal proceeding arising out of the impugned order against the petitioner stands quashed and this application stands allowed.”

In the light of above, in my opinion, a case for grant of anticipatory bail is made out. This application is accordingly allowed.

Let the petitioner above named, in the event of his arrest/surrender within six weeks from today in the Court below, be released on bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned J.M. 1st Class, Patna, in Complaint



Case No. 26475(C) of 2014, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

This is subject to the condition that the petitioner shall present himself before the Police/Court, as the case may be, as and when required and in the event of failure on his part to appear before the Court on two consecutive occasions, his bail bonds shall be liable to be cancelled.

(Chakradhari Sharan Singh, J)

Pawan/-

U		T	
---	--	---	--

