

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22937 of 2019

Arising Out of PS. Case No.-117 Year-2017 Thana- DARBHANGA COMPLAINT CASE
District- Darbhanga

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1. VIVEKANAND JHA, aged about 59 years, Gender – Male, S/o Late Surya Narayan Jha @ Late Satya Narayan Jha R/o village- Bajitpur, P.S.- Bahadurpur, District- Darbhanga
 2. Vandana Devi, aged about 54 years, Female, W/o Vivekanand Jha R/o village- Bajitpur, P.S.- Bahadurpur, District- Darbhanga
 3. Raushan Kumar Jha, aged about 24 years, Male, S/o Vivekanand Jha R/o village- Bajitpur, P.S.- Bahadurpur, District- Darbhanga.

... .. Petitioner

Versus

1. The State of Bihar
2. Shri Ram Yadav @ Ram Kumar, aged about 40 years, Gender – male, Son of Parmeshwar Yadav Resident of Village- Bajitpur, Police station - Bahadurpur, District - Darbhanga

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Baidya Nath Thakur
For the Opposite Party/s : Mr.Ajay Kumar Jha

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 22-07-2019 Heard learned counsel for the petitioners and learned counsel representing the State.

Petitioner, in the present case, are seeking anticipatory bail in connection with Complaint Case No. 117/2017 pending before learned A.C.J.M. - V, Darbhanga under Section 323, 341, 406, 420, 504 and 34 of the Indian Penal Code. Earlier provisional anticipatory bail has been granted to the petitioners vide order dated 11.04.2019.

Learned counsel for the petitioner submits that on perusal of the complaint petition it will appear that the



allegations are that of civil nature as the petitioners are said to have received certain amount from the complainant on the pretext of selling of land but later on sale deed of the land has not been executed. It is submitted that so far as the allegations of assault on the complainant and tearing of the document of agreement of sale are concerned, those are only super-impositions.

In the petition seeking anticipatory bail the petitioners have admitted that at the time of execution of sale agreement the complainant had given Rs. 3,21,000/- to the petitioners and subsequently on 22.03.2016 a sum of Rs. 50,000/- was paid on oral agreement that the complainant would pay the balance consideration amount. They have also taken a stand that before lodging of the complaint case the complainant had received Rs. 3,71,000/- from the petitioners without any protest but thereafter the complaint case was filed.

Learned counsel for the State submits that the prayer for anticipatory bail is not fit to be allowed at this stage when the process under Section 82 Cr.P.C. has already been issued against the petitioners. Reliance in this regard



has been placed on the judgment of Hon'ble Supreme Court in the case of Lavesb Vs. State of Bihar (NCT of Delhi) reported in (2012) 8 SCC 730 (paragraph 12).

Having heard learned counsel for the petitioners and the State, this court is not willing to extend the benefit of anticipatory bail to the petitioners finding that the petitioners had not appeared before the court below despite issuance of summons and warrants. At this stage, when the process under Section 82 Cr.P.C. has already been initiated, the prayer for anticipatory bail is not fit to be entertained.

Instead this court grants liberty to the petitioners to surrender in the court below within a period of four weeks from today and pray for regular bail. In case, the petitioners surrender and pray for regular bail within the given period, their prayer for regular bail shall be considered without being prejudiced by the order of this court.

It is made clear to the court below that the prayer for regular bail shall not be rejected only because this court has refused to entertain the anticipatory bail application because the parameters for grant of regular bail will be quite



different from that of anticipatory bail.

Since the petitioner no. 2 is a female, in the given facts and circumstances this court would direct the court below that in case she surrenders and prays for regular bail her prayer shall be considered on the same day.

The court below shall also keep in mind the submissions of the petitioners particularly that the entire transactions seem to be that of the civil nature.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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