

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58148 of 2019

Arising Out of PS. Case No.-1361 Year-2018 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

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Sanjeev Ranjan Son of Sri Bhagwan Prasad, Resident of Near 'Ashirwad Nursing Home' Radha Rani Sinha Road, P.S.- Adampur, District – Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar.
2. Pritam Kumar Jha Son of Late Bhagwat Jha, Resident of Village - Parbatta, P.S.- Naugachchiya, District - Bhagalpur.

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr.Shivendra Prasad, Advocate

For the Opposite Party/s : Mr.Anil Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 03-12-2019 Let the deficit welfare stamp be kept on record.

Heard learned counsel for the petitioner and learned counsel representing the opposite party no. 2 as also learned APP for the State.

Petitioner in the present case is seeking anticipatory bail in connection with Complaint Case No. 1361 of 2018 by which cognizance has been taken under Sections 406 and 420 of the Indian Penal Code.

Learned counsel for the petitioner submits that the complainant had opened a demat account with the petitioner's franchise which he had obtained from Share Khan. It is the allegation of the complainant-opposite party no. 2 that this



petitioner had dealt with the securities of the opposite party no. 2 valued at Rs. 8,29,000/- approximately without his consent and has misappropriated the entire amount.

Learned counsel for the petitioner submits that the demat accounts were opened in the year 2007-08 and thereafter when the disputes arose the opposite party no. 2 had subjected himself to arbitration proceeding and in the said arbitration proceeding the Arbitrator gave an award holding that the claim of opposite party no. 2 is devoid of any merit. The appeal preferred by the opposite party no. 2 was also rejected by the panel of the Arbitrators.

Learned counsel further submits that this being a case of civil nature, filing of the FIR in the year 2017 is only after thought and a belated exercise for recovery of money.

On the other hand, learned counsel representing the opposite party no. 2 submits that so far as the arbitration award and the appellate order as contained in Annexure '4' and '5' of the present application are concerned, it would be evident from a bare perusal of the same that those award and appellate order have not been passed by an independent Arbitrator. The Arbitrators were not independent persons and they had been appointed by one of the parties to the dispute.



Learned counsel for the opposite party no. 2 has drawn the attention of this Court towards the award made by the learned sole Arbitrator in Reference Case No. 1066 of 2016 under the Rules, Bye-laws and Regulations of the Bombay Stock Exchange Ltd. It is stated in one of the paragraphs of the award that this petitioner had indulged in trading amounting to somewhere near Rs. 14 crores, without specific instruction of the investor, and by doing so he has not only caused loss to the applicant investor but at the same time, has augmented his brokerage. The investors interest has therefore been positively harmed. This award has been rendered on 29th June, 2017.

Learned counsel submits that in such circumstance the opposite party no. 2 has lodged the FIR and thereafter on filing of the final report a protest petition was filed whereupon the same has been treated as a complaint petition and now cognizance has been taken against the petitioner under Section 406 and 420 of the Indian Penal Code.

Learned A.P.P. for the State and learned counsel representing the opposite party no. 2 have opposed the prayer for bail.

Having heard learned counsel for the parties and on perusal of the records, this Court finds that on the last date when



the matter was taken up for consideration, in the nature of the submission made, this Court had directed the petitioner to file a supplementary affidavit stating therein that he is ready to return the alleged money to the informant, learned counsel for the petitioner has submitted that an affidavit has been filed stating that the petitioner would not be able to pay the amount, at this stage, this Court is of the considered opinion that there being a specific case of the opposite party no. 2 that the petitioner had dealt with the securities of the petitioner without his consent and now a prima-facie case has been found by the learned Magistrate under Section 406 and 420 of the Indian Penal Code and the petitioner is not ready to show his bonafide, considering the huge amount of the security which has been dealt with by this petitioner allegedly without the consent of opposite party no. 2, this Court is not willing to extend the privilege of anticipatory bail to the petitioner.

The application is, thus, dismissed.

(Rajeev Ranjan Prasad, J)

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