IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17672 of 2018

Arising Out of PS. Case No.-738 Year-2017 Thana- KOTWALI District- Patna

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Rakesh Maini, S/o Tilak Raj Maini, R/o Village- 305, Blue Diamond, Juhu Tara Road, P.S.- Santacruze (West), District- Mumbai Suburban.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Mukesh Kumar, S/o Late Ram Prasad Sharma, R/o Md. Azad Path, Saristabad, P.S.- Gardanibagh, District- Patna.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Dinesh Jha
For the Opposite Party/s : Mr.Sri Rajballabh Singh

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

16 13-03-2019 Heard Mr. Sanjay Singh, the learned counsel for the petitioner, the learned Additional Public Prosecutor for the State as well as Mr. Sanjay Kumar Pandey, the learned counsel appearing on behalf of the informant.

The petitioner apprehends his arrest in Kotwali P.S. Case No.738 of 2017, corresponding to G.R. No.8223 of 2017, registered under Sections 406, 409, 467, 468, 420 and 120(B) of the Indian Penal Code and Section 3 of the Protection of Interest of Depositors Act, 2002.

The informant alleged in his written application that his mother, Jaimala Devi invested Rs.8,62,000/- in Bharat Capital Services Limited Company, registered under the Companies Act. A certificate of deposit was issued in favour of mother of the informant. There are many other schemes launched by the Company in which the investors invested their money. Co-accused, Saket Kumar was the Area Manager and co-accused, Kanhai Prasad Singh was the Branch Manager of the Company. The Managing Directors of the Company are Rakesh Maini, the petitioner, Prabhat Anand Jha, Ram Sagar Dubey, Santosh Kumar and Indra Bahadur Singh. The directors of the Company with its officials misappropriated the entire money of the investors. Some of the names of the investors are also mentioned in the FIR.

The learned counsel for the petitioner submits that all the allegations are false and concocted. Bharat Capital Services Limited in question is a big and reputed Company registered under the Companies Act and the petitioner is Managing Director of the Company. The petitioner started business of Company in Bihar and several branches of the Company including the branch at Patna were opened. Staff and Commission agents were appointed. The informant and other witnesses are the commission agents. Nine other branches of the Company are running smoothly without any complaint from any of the customers/investors for last eleven years. The Company has also taken corporate agency licence from IRDA under new guidelines and has tied up seven difference insurance companies to sell their products. The terms of agreement of the contract entered into by the parties is clear and binds the

Company and the investors. There is no intention of wrong doing and running away with the investors' money. The present situation has arisen only due to irresponsible and improper working of the staff of Patna office who have failed to communicate the real manner of deal with the petitioner and others. Co-accused, Saket Kumar, who was Assistant Vice President of the Company, was authorized to make all transactions on behalf of the Company. He was authorized to deposit and deliver the amount to the customers and report the same to the head office but Saket Kumar committed mischief with the Company and did not report about the real facts and exact transactions, the exact number of depositors and the amount deposited by the depositors. The money has been deposited in connection with real estate business with condition that the Company will either execute the sale deed with regard to the land in favour of the investors or would return back investors' money with interest thereon as per the conditions laid down in the certificate. The petitioner is still ready to return the entire amount to the investors. It is further submitted that on account of non-availability of the documents, the payment could not be made. It is further submitted that of course the petitioner has taken several adjournments for payment of the admitted amount, i.e., Rs.55,00,000/- to different investors but he could not be able to make payment. It is submitted that petitioner is still ready to make payment, therefore, the petitioner deserves pre-arrest bail.

On the other hand, the learned Additional Public Prosecutor and the learned counsel for the informant vehemently opposed the prayer for pre-arrest bail of the petitioner.

Learned counsel for the informant submits that on 09.04.2018 when the case was taken up for hearing, the learned counsel for the petitioner submits that the petitioner was willing to settle the dispute and make payment to the investors. Thereafter several adjournments were granted to the petitioner only with a view to make payment of the admitted amount of the investors. The informant and other investors were directed to furnish the admitted amount of investment but on one pretext or the other, the petitioner took adjournment and did not make payment. The petitioner again sought adjournment for payment of admitted amount of investment made by the investors.

From perusal of the records and the FIR, it is apparent that the informant made allegation that Bharat Capital Services Limited Company launched different schemes for investment in the Company and the investors would get appropriate return but the Company did not return the investors their amount with interest or the lands as per the certificates issued by the Company. During the course of hearing of this bail petition, it transpired that the investors have admittedly invested Rs.55,00,000/- in different schemes of the Company. The petitioner being the Managing Director of the Company had agreed to make payment. The investors also deposited their photo copy of the certificates with the date of maturation but on one pretext or the other, the petitioner took adjournment and did not make payment. There appears from the records that the petitioner being the Managing Director of the Company failed even after giving undertaking to return Rs.55,00,000/-, admitted amount besides the claim of other investors and thereby the petitioner swindled the entire amount of simple and innocent investors.

Taking into consideration the facts aforesaid, I am not inclined to enlarge the petitioner on anticipatory bail. Accordingly, the prayer for anticipatory bail of the petitioner is rejected.

(Prabhat Kumar Jha, J)

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