IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14546 of 2020

Arising Out of PS. Case No.-389 Year-2019 Thana- DUMRAO District- Buxar

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1. DINANATH PRASAD Son of Late Ganesh Prasad Resident of Village - Ward no.13, Station road, Dumraon, P.S.- Dumraon, Dist.- Patna.
2. Shiv kumar Son of Dinanath Prasad Resident of Village - Ward no.13, Station road, Dumraon, P.S.- Dumraon, Dist.- Patna.

... ... Petitioner/s

Versus

1. The State of Bihar
2. The Bank of Baroda through the Branch Manager, Dumraon Branch, Distt.- Buxar. Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Bindeshwar Kumar

For the Opposite Party/s : Mr.Satya Nand Shukla

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

2 08-07-2020 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Heard the learned counsel for the petitioners and the learned APP appearing for the State.

This is an application for grant of anticipatory bail in connection with Dumraon P.S. Case No. 389 of 2019 (G.R. No. 2767 of 2019) registered for the offence punishable under Sections 406, 420, 467, 468, 471 and 472 of the Indian Penal Code.

The case of the prosecution in brief, as stated in the written complaint dated 7.11.2019, filed by the Branch Manager, Bank of Baroda, Dumraon, Buxar, before the Officer-in-Charge, Police Station-Dumraon, District-Buxar is that the petitioner no. 2 herein had borrowed a loan amount of Rs. 35,00,000/- by executing a registered mortgage deed in favour of the Bank. It is alleged that the petitioner no. 1 had executed registered mortgage of 75.25 decimal of land in question on 05.02.2015 for the purposes of availing loan amount of Rs. 35,00,000/- and in the said registered mortgage deed, the petitioner no. 2 is a witness, who is also the proprietor of the firm, namely, Bihar Traders and he himself was/is the applicant for the loan amount in question. It is further alleged that subsequently loan was granted to the petitioner no. 2 by the Bank and the Petitioner no. 1 had become the guarantor, but later on the petitioner no. 2 failed to pay the loan amount and he was declared a defaulter, whereafter action was taken under the SARFAESI Act for getting physical possession of the mortgaged land, however, it transpired that the said land in question had already been sold to someone else in the year, 1999 itself and the name of the said purchaser, namely, Smt. Bikis Jahan had also been mutated in the records. It is thus the allegation of the informant that the petitioners herein have conspired together and committed an offence of criminal breach of trust by dishonestly inducing the Bank to sanction the loan by mortgaging a land, which they had already sold to some other person before the application for loan was made.

The learned counsel for the petitioners has submitted that the petitioners are innocent, they have been falsely implicated in the present case and they are having a clean antecedent. It is further submitted that the petitioners are ready to liquidate the loan amount in question. At this juncture, the learned counsel for the petitioners was asked to take instructions from the petitioners as to how they wish to liquidate the loan amount in question, which has further swelled during the interregnum period. Upon instructions, the learned counsel for the petitioners has submitted that the petitioners are under financial constraints and they are willing to pay a sum of Rs. 5,00,000/- for the purposes of grant of anticipatory bail.

Per contra, Sri Vivek Prasad, the learned counsel for the Bank has submitted that the petitioners have engaged in cheating the Bank by having sold the mortgaged land in question prior to receipt of the loan amount and having falsely and dishonestly induced the Bank to advance the loan amount by falsely representing that the land was free from all sort of encumbrances. It is submitted that the fact is that though the land had been sold prior to the advancement of the loan in question, it appears that the mutation was not carried out, hence, the Bank could not detect that the petitioners had already sold the land in question which they were seeking to mortgage. In such view of the matter, it is submitted that the petitioners have cheated and deceived the Bank and committed breach of trust, thus, they do not deserve the privilege of bail.

Having regard to the facts and circumstances of the case and considering the fact that prima facie, the petitioners are guilty of the offences alleged and have misappropriated public money by deceiving the Bank, I do not find the present case to be a fit case for grant of anticipatory bail, hence, the present petition stands dismissed.

(Mohit Kumar Shah, J)

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