IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16370 of 2020

Arising Out of PS. Case No.-252 Year-2019 Thana- KOTWALI District- Patna

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RAMPUKAR MANDAL Son of Yogendra Mandal Resident of Village - Dahu Nagar, Mahua Bazar, P.S.- Basnahi (Sonbarsa), District - Saharsa.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.P.K.Shahi, Sr. Adv.
For the State	:	Mr.Sanjay Kumar Tiwary, APP
For the Informant	:	Mr. Ramakant Sharma, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA

ORAL ORDER

3 04-06-2020 Heard Mr. P.K.Shahi, learned senior counsel for the petitioner, Mr. Ramakant Sharma, learned senior counsel for the informant and Mr. Sanjay Kumar Tiwary, learned counsel for the State through Video Conferencing.

The petitioner seeks bail in Kotwali P.S. Case No.252 of 2019 registered under Sections 406, 420, 120B of the Indian Penal Code and Section 138 of the Negotiable Instruments Act.

The informant, Niranjan Kumar, the Director of M/S Patliputra Hytech Infra Private Ltd. in his written petition alleged that Rampukar Mandal(the petitioner), proprietor of M/S Kaushalya Rice Mill on account of proximity with Director of the informant's company took loan of Rs.75 lacs for development of the Rice Mill with assurance to return the money in time. The informant transferred Rs.75 lacs to Rampukar Mandal through R.T.G.S. in the year 2017. It is further alleged that petitioner had given five cheques of Rs.75 lacs to the informant in lieu of paying the loan amount and requested the informant to present the cheques as sufficient amounts were in the account of the petitioner. The informant presented the cheque on 07.04.2018 but all the cheques were dishonoured. It is further alleged that the petitioner gave assurance to present the cheque again but even after presentation of the cheques, on the request of the petitioner, the cheques were bounced. Thereafter, the informant issued legal notice and ultimately filed the case on 26.03.2019.

Mr. P.K.Shahi, learned senior counsel for the petitioner submits that admittedly the petitioner took Rs.75 lacs from the company of the informant and there is no dispute. According to the case of the petitioner, there was an agreement between the petitioner and the company of the informant. The agreement is annexed as Annexure-2 to this petition. According to the terms of the agreement as incorporated in para 15 of the agreement, if any dispute or difference arises, the matter shall be referred to the Arbitrator but the informant did not refer the matter to any Arbitrator. It is further submitted that petitioner is not disputing the fact of borrowing Rs.75 lacs from the company of the informant but the petitioner paid Rs.20 lacs through R.T.G.S. in the account of the informant's company. It is further submitted that so far as the offence under Section 138 of the N.I.Act is concerned, no offence under Section 138 of the N.I.Act is made out in view of Section 138 or Section 140 of the N.I.Act. The procedure under the N.I.Act is prescribed that once the cheque is bounced, the complainant shall give notice to the author of the cheques intimating its dishonourment within two weeks from the date of dishonourment of the cheque and after one month from the date of issuance of notice, a complaint petition has to be filed but no such procedure is followed by the informant. The informant himself stated that first time the cheque was bounced on 07.04.2018. The informant did not disclose the subsequent date on which the cheques were presented. It is further submitted that so far as the offence under Section 406, 420, 120B of the Indian Penal Code is concerned, no offence under Section 406 and 420 of the Indian Penal Code is made out against the petitioner. Petitioner is admitting that in pursuance of partnership agreement, the money was lent to the petitioner who is proprietor of M/S Kaushalya Rice Mill for development of M/S Kaushalya Rice Mill. If any dispute with regard to payment of money arises between the parties, the matter should have been referred to the Arbitrator. The petitioner is in jail since 28.01.2020 for no fault on his part. It is further submitted that from bare reading of the F.I.R. itself, it appears that dispute is purely of civil nature. Thus, the petitioner deserves bail.

Mr. Ramakant Sharma, learned senior counsel for the informant duly assisted by Mr. Sanjay Kumar Tiwary, learned counsel for the State vehemently opposed the prayer for bail. Mr. Ramakant Sharma, learned senior counsel for the informant submits that due to hearing through Video Conferencing, he could not be able to file the counter-affidavit duly affidavited by the informant. It is further submitted that from the very inception of borrowing the money, the petitioner had intention to cheat and breach the trust as the petitioner never returned any money to the informant. It is further submitted that informant had supplied paddy worth Rs.20 lacs for milling in the rice mill and the petitioner deposited the price of the paddy through R.T.G.S. in the account of the informant but the petitioner claimed to have paid the amount towards the payment of loan. It is further submitted that no agreement was arrived between the petitioner and the informant. The agreement is a forged copy.

Signature of the informant or the Director of the firm is not genuine one. It is further submitted that petitioner himself undertook before the learned Sessions Judge to make payment of the entire dues/installments but the petitioner did not whisper anything to the payment of dues to the informant, therefore, the petitioner does not deserve bail.

Perused the F.I.R. and after considering the submission of both sides, it appears that admittedly, the petitioner borrowed money for development of his rice mill. The petitioner although claimed to have borrowed the money in pursuance of an agreement arrived between the parties but the informant denied this fact of execution of any agreement and said that the money was lent purely on the basis of the proximity and the close relation between the petitioner and the informant but the petitioner breached the trust imposed upon him and failed to repay the loan given to the petitioner. It further appears that the dispute arose with regard to repayment of the loan and on the face of it, it appears that it is purely a civil dispute in which the petitioner is in jail since 28.01.2020. Without expressing any opinion about the maintainability of the case under Section 138 of N.I.Act, I find that petitioner deserves bail. Accordingly, petition for bail is allowed.

Considering the facts aforesaid, let the petitioner, above named, be released on bail on furnishing bail bond of Rs.10,000/-(Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Patna in connection with Kotwali P.S. Case No.252 of 2019.

(Prabhat Kumar Jha, J)

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