IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.21096 of 2020

Arising Out of PS. Case No.-79 Year-2020 Thana- PIRBAHOR District- Patna

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KUMAR KAMLESH @ MUNNA @ MUNNAJI Son of Late Late Ram Das Shah Resident of Village - Shanti Place, Bakarganj Baari Path, P.S.- Pirbahore, Distt.- Patna.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Apurva Kumar, Adv.
For the Opposite Party/s : Mr.Akhileshwar Dayal, APP
For the Informant : Dr. Uma Shankar Prasad, Sr.Adv.

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

5 05-11-2020 Heard learned counsel for the petitioner, learned senior counsel representing the informant and Mr. Akhileshwar Dayal, learned APP for the State.

The petitioner in the present case is seeking pre-arrest bail in connection with Pirbahore P.S. Case No.79/2020 registered for the offences punishable under Sections 448, 384, 385, 379, 427, 450 and 506/34 of the Indian Penal Code.

Learned counsel for the petitioner submits that as per the allegation the petitioner along with his wife and 2-3 unknown persons went to the jewelry shop of the informant and broke the glass of the shop and counter as also looted jewelry and Rs.40,000/- in cash. It is alleged that the petitioner used to

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demand Rangdari and on account of that he used to commit loot and used to threaten him in various ways.

Learned counsel submits that in fact the petitioner is the landlord and the informant is the tenant of the shop and this fact is not in dispute. It is submitted that because of the tenancy dispute the petitioner has been falsely implicated in this case. Earlier also in the year 2010-11 the tenants of the premises came together to lodge false criminal case against the petitioner but in the said case in course of trial no prosecution witness has turned up.

Referring to the affidavit filed on behalf of the petitioner, learned counsel submits that the petitioner has served a termination notice on the informant on 10.04.2017 for vacating the shop in question. Petitioner has also filed a case bearing No.1497(M)/2017 before the court of learned S.D.O., Patna Sadar under Section 107 of Cr.P.C. against the informant in which notice has been sent to him. Learned counsel submits that in order to pressurize the petitioner not to take legal action for eviction of the informant the present case has been lodged.

It is submitted that in the First Information Report the petitioner along with his wife and 2-3 unknown persons were made accused, however, wife of the petitioner has been granted

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privilege of anticipatory bail by learned court below. It is further submitted that in course of investigation police has recorded in paragraph ‘13’ of the case diary that CCTV footage only shows that a person was going to the shop and coming out from there. The petitioner has not been identified and it has further been stated by the I.O. that in the CCTV footage no lady or any other person has been shown, therefore, the whole manner of occurrence as alleged stands falsified and this is nothing but a case of false implication.

It is then pointed out that the I.O. has stated in paragraph ‘7’ that he had gone to the place of occurrence where he found one piece of broken glass in the shop which is said to be the piece of the glass of main-door of the shop but I.O. has not found that the main-door was in broken condition. Thus, there is neither any identification of the petitioner nor any prima-facie material coming in course of investigation. It is then submitted that none of the witness has come to say that there was loot of any money from the cash counter of the shop.

By explaining the antecedent as stated in paragraph ‘3’, learned counsel submits that Alamganj P.S. Case No.58/2010 relates to a forcible construction of Panshala on the land of the petitioner in which a counter case being Alamganj

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P.S. Case No.59/2010 has been lodged by the petitioner and the petitioner is on bail in Case No.58/2010. Alamganj P.S. Case No.312/2010 relates to partition of land between gotiyas of the petitioner and again Alamganj P.S. Case No.317 relates to forcible construction of Panshala on the land of the petitioner and in these cases the petitioner has been granted privilege of anticipatory bail. So far as Pirbahore P.S. Case No.77/2011 is concerned, it has been filed by the present informant like the present case and in this case the petitioner has been granted bail by the learned court below, in course of trial till date no witness has turned up. It is thus submission of learned counsel for the petitioner that the petitioner is not a man of criminal antecedent in the kind it has been sought to be argued on behalf of the informant and these cases are only in relation to the properties of the petitioner.

On the other hand, learned senior counsel representing the informant has submitted that the petitioner has indulged in breaking the glass of the shop of the informant and earlier also against him the shop owners have made complaint in Pirbahore police station. It is submitted that petitioner being owner of the shops is indulged in demanding rangdari and in threatening the shopkeepers on various occasions. Learned senior counsel

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submits that in the given facts and circumstances of the case taking note of the antecedent of the petitioner, his prayer for anticipatory bail is fit to be rejected.

Mr. Akhileshwar Dayal, learned APP for the State has opposed the prayer for anticipatory bail of the petitioner while submitting that it is a case of dispute between the petitioner and the informant who are in the relationship of shop owner and tenants.

Having regard to the facts and circumstances of the case, after hearing learned counsel for the parties and on perusal of the records, this Court finds that in the First Information Report there are allegations that the petitioner along with his wife and 2-3 unknown persons had entered in the shop and broke the glass of the counter of the shop whereas the I.O. has in course of investigation recorded that he was shown a piece of broken glass which was of the main-door of the shop, there is no mentioning in the diary that the counter glass was found in broken condition. Further in the CCTV camera the petitioner has not been identified and no lady or unknown person was found moving towards the shop, the alleged occurrence of breaking the glass of the counter is not recorded in the CCTV. The admitted relationship of landlord and tenant has not been

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denied and the petitioner, in the opinion of this Court, the petitioner has explained that the cases against him are in the nature of the cases which have arisen out of property dispute in which the petitioner has been granted bail/anticipatory bail.

In the given facts and circumstances, this Court is inclined to grant privilege of anticipatory bail to the petitioner, let the petitioner above-named in the event of his arrest or surrender within a period of four weeks from today in connection with Pirbahore P.S. Case No.79/2020 be released on bail on furnishing of bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of learned C.J.M., Patna, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C. i.e.

(i) a condition that the person shall make himself available for interrogation by a police officer as and when required;

(ii) a condition that the person shall not, directly or indirectly, make any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to any police officer;

(iii) a condition that the person shall not leave India

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without the previous permission of the Court.

And further condition that the petitioner shall cooperate in course of trial.

And further condition that the learned court below shall verify the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take steps for cancellation of bail bond of the petitioner.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

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