

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76387 of 2019

Arising Out of PS. Case No.-233 Year-2019 Thana- DANAPUR District- Patna

1. S.M. Gulab S/o Late Md. Hazi Mohammad Naswab R/o village- Drawi Lane, P.S.- Danapur, District- Patna
2. Md. Gayas S/o Late Md. Hazi Mohammad Naswab R/o village- Drawi Lane, P.S.- Danapur, District- Patna
3. Hazi Mohammad Mustaq @ Md. Mustaqe S/o Late Md. Hazi Mohammad Naswab R/o village- Drawi Lane, P.S.- Danapur, District- Patna
4. Md. Reyaz S/o Late Md. Hazi Mohammad Naswab R/o village- Drawi Lane, P.S.- Danapur, District- Patna

... .. Petitioners

Versus

1. The State of Bihar
2. Neelam Agrawal, wife of Dr. Ajay Kumar Agrawal, R/o 93/A, R. K. Avenue, Rajendra Nagar, P.S. Kadamkuan, District- Patna

... .. Opposite Parties

Appearance :

For the Petitioners	:	Mr. Vishwajit Singh, Advocate Mr. Kundan Kumar Singh, Advocate
For the Opposite Party	:	Dr. Indivar Kumari, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

5 19-06-2020 Heard Mr. Vishwajit Singh, learned counsel for the petitioners and Dr. Indivar Kumari, learned Additional Public Prosecutor for the State via video conferencing.

The petitioners seek pre-arrest bail in connection with Danapur P. S. Case No.233 of 2019 registered under Sections 406 and 420/34 of the Indian Penal Code.

The prosecution case, in brief, is that the petitioners



executed a deed of agreement for sale on 17.03.2016 in respect of land bearing Tauzi No.170, Survey Plot No.772, Thana No.36, Area 78.4 decimals in favour of the informant Nilam Agrawal and Punit Jain and received Rs.20,00,000/- as advance through cheque and cash. They assured that within two months of registry of the land in question, they will give possession of the land to the informant. The accused persons received in all Rs.80,00,000/- out of consideration amount of Rs.2,50,88,000/- on different dates but did not execute the sale deed.

Learned counsel for the petitioners submitted that the allegation made in the FIR would not attract the ingredients of the offence alleged in view of the ratio laid down by the Supreme Court in the case of *Murari Lal Gupta vs Gopi Singh* reported in (2005) 13 SCC 699. He contended that the petitioners are full brothers and they have been falsely implicated in this case as the informant is himself responsible for non-execution of the sale deed. The real fact is that the registered deed of agreement for sale was executed on 17.03.2016 in favour of M/s Lisa Chemicals Limited through its Director Punit Jain and Nilam Agrawal (informant) jointly and only an amount of Rs.4,00,000/- was tendered as advance. As per agreement dated 17.03.2016, the Company was required to



make payment of the balance amount within two years for execution of the registered sale deed. Since the informant or for that matter, the company did not pay any amount after initial amount of Rs.4,00,000/-, the sale deed was not executed by the petitioners.

On the other hand, learned Additional Public Prosecutor for the State has contended that the informant has alleged that he has made payment of Rs.80,00,000/- on different dates. She contended that the ratio laid down by the Supreme Court in the case of *Murari Lal Gupta vs Gopi Singh* (supra) would not be applicable in the present case. She has further contended that there is specific allegation in the FIR that the informant came to know that the accused persons are trying to sell the aforesaid land to another person and, only thereafter, the FIR has been instituted.

Considering the nature of allegation, submissions advanced at the Bar and the ratio laid down by the Supreme Court in the case of *Murari Lal Gupta vs Gopi Singh* (supra), the petitioners named above are directed to be released on bail, in the event of arrest or surrender before the court below, on furnishing bail bond of Rs.10,000/- (Rupees ten thousand) with two sureties of the like amount each to the satisfaction of



learned ACJM-1, Danapur in Danapur P. S. Case No.233 of 2019, subject to the conditions as laid down under Section 438 (2) of the Code of Criminal Procedure.

(Ashwani Kumar Singh, J)

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