IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.80947 of 2019

Arising Out of PS. Case No.-388 Year-2017 Thana- FATUA District- Patna

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RAJESH KUMAR AGARWAL @ RAJESH AGARWAL Son of Late Govind Prasad Agrawal R/o M/s Maa Tara Agency, Madhusudan Ground, K.K Sahu Lane, Kedarnath Road, P.S.- Town, District - Muzaffarpur

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Om Prakash

For the Opposite Party/s : Mr. Sandeep Kumar Shahi, Adv.
Miss. Shradha Banra, Adv.

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL JUDGMENT

Date: 27-02-2020

Heard the learned counsel for the petitioner, the learned A.P.P. for the State and the learned counsel appearing for the Opposite Party No.2.

2. The present petition is virtually a 4^{th} attempt at the behest of the petitioner for grant of anticipatory bail in connection with Fatuha P.S. Case No. 388 of 2017 for the offence punishable under Sections 406 and 379 of the Indian Penal Code.

3. Initially, the petitioner had moved this Court by filing a bail petition bearing Cr. Misc. No. 61310 of 2017 which was disposed of by an order dated 31.01.2018 with a direction that the petitioner shall be released on provisional bail upon him surrendering before the concerned court within a period of four weeks and showing proof of payment of Rs. 50 lacs to the opposite party no.2- i.e. the informant as also with a further direction that the balance amount of Rs. 1.50 crore shall be paid within a period of 8 months thereafter, failing which the privilege of anticipatory bail being extended to the petitioner would stand cancelled automatically. It would be relevant to reproduce the relevant portion of the aforesaid order dated 31.01.2018, passed by this Court herein below:-

> "The learned Sr. counsel for the petitioner, at the very outset, submits that leaving aside the nitty-gritty of the case, the petitioner is ready to make payment of a sum of Rs. 2.00 crore for the purpose of grant of anticipatory bail apart from the sum of Rs. 25 lacs already deposited in pursuance to the orders of this Court.
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> The learned counsel for the opposite party no. 2 submits that a sum of Rs. 3.63 crore is outstanding.
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> The learned Senior Counsel submits that out of the said amount of Rs. 3.63 crores, a sum of Rs. 1.13 crores approx. is outstanding with opposite party no. 2 from before and a sum of Rs. 25 lacs has been paid to the opposite party no. 2 by the orders of this Court, hence the balance amount comes to a sum of around Rs. 2.25 crores which is more or less the amount which the petitioner has agreed to pay to the opposite party no. 2, hence the petitioner be directed to deposit a sum of Rs. 2 crore subject to accounting to be carried out between the parties which should be made without prejudice to

any order being passed by this Court.

Even according to the case of the prosecution, the allegation is regarding 52,260 bags of sugar having been loaded on train rake from Rampur which was transported to the unloading rake point at Fatua. Thereafter, the said 52,260 bags of sugar each containing 50 kgs. of Sugar were loaded on 163 trucks however, 83 trucks reached the godown of the petitioner herein but 78 trucks went missing. The further allegation is that since the said sugar was to be delivered to the petitioner herein, there is a suspicion that the said truck were taken to the godown of the petitioner herein.

Having regards to the facts and circumstances of the case as also the fact that the entire allegation is purely a dispute pertaining to business transaction, I do not find any impediment in grant of anticipatory bail to the petitioner specially in view of the fact that the petitioner himself is ready to pay a sum of Rs. 2 crores, hence it is directed that the said amount may be paid within a period of 09 months from today.

Having regard to the facts and circumstances of the case, it is directed that the petitioner shall be released on provisional bail upon him surrendering before the concerned court within a period of four weeks from today and showing the proof of payment of Rs. 50 lacs to the opposite party no. 2. It is further directed that the balance amount of Rs. 1.50 crore shall be paid within a period of 08 months thereafter, whereafter upon showing the proof of payment of the said amount, the provisional bail of the petitioner shall be confirmed. It

> is further directed that the petitioner shall not be arrested for a period of four weeks from today. It is made clear that in case of any default in making payment, the present privilege of anticipatory bail being extended to the petitioner herein would stand cancelled automatically."

4. Thus, it is apparent from the aforesaid order dated 31.01.2018 that the petitioner himself had undertaken before this Court to pay a sum of Rs. 2 crore to the Opposite Party No.2 within a period of nine months and on the basis of said averments made before this Court by the learned counsel for the petitioner, this Court had passed the aforesaid order dated 31.01.2018.

5. Thereafter, the petitioner had filed another petition bearing Cr. Misc. No. 10239 of 2018 for modification of the aforesaid order dated 31.01.2018, however, the same was withdrawn by the petitioner and this Court by an order dated 16.05.2018 had dismissed the said petition as withdrawn, but unscrupulously the petitioner had filed yet another petition bearing Cr. Misc. No. 39432 of 2018, however, the same had also stood dismissed as withdrawn by an order dated 04.07.2018, passed by this Court.

6. Nonetheless, the petitioner had mustered courage to file still another petition for grant of anticipatory bail bearing

Cr. Misc. No. 59909 of 2018, however, this Court found that the petitioner was trying to take this Court for a ride and in the process has dared to abuse the process of the Court, only with a view to buying time and lingering the matter, while enjoying interim protection from arrest, hence, the said petition, bearing Cr. Misc. No. 59909 of 2018 was dismissed by a judgment dated 25.04.2019, relevant extracts whereof are reproduced herein below:-

> "6. Yet again the petitioner had mustered courage to file another petition for grant of anticipatory bail in the form of the present petition on the ground that some time be granted to the petitioner for arranging the fund and honouring the undertaking given to this Court especially since he has been able to pay a sum of Rs.1 crore to the opposite party no.2. On 10.10.2018, when the present case was taken up for hearing, the learned Senior counsel appearing for the petitioner had produced two cheques for a sum of Rs. 5 lacs, which in turn was handed over to the learned counsel for the Opposite Party No.2 and some time was sought to show bonafide on the part of the petitioner by making further payment to the opposite party no.2. However, on the next date of hearing i.e. 09.01.2019, when the case was taken up for hearing, after almost three months, nobody had appeared for the petitioner, but in the interest of

justice, this Court had adjourned the present case, whereafter the present case was heard on 13.03.2019, on which date a cheque of Rs. 5 lacs was handed over by the learned counsel for the petitioner to the learned counsel appearing for the opposite party no.2 and the case was adjourned to 27.03.2019 in order to enable the petitioner to make further payments, however, on the next date of hearing i.e. 25.04.2019, the learned counsel for the petitioner again sought some time for complying with the undertaking furnished by the petitioner, as recorded by this Court in its order 31.01.2018.

7. Judging the conduct of the petitioner, this Court is of the view that the petitioner is trying to take this Court for a ride and in the process has dared to abuse the process of the Court and the fact is that the petitioner, in the garb of several petitions filed from time to time including the present one, has been buying time and lingering the matter, while enjoying interim protection from arrest, hence he deserves no further indulgence by this Court, especially in view of the fact that on account of the nature of allegations levelled against the petitioner and the petitioner's willingness to make good, the loss caused to the opposite party no.2 as also taking a lenient view of the matter, this Court had directed the petitioner to deposit a sum of Rs. 2 crores only, instead of the outstanding sum of Rs. 3.60 crore.

> However, in view of the facts and circumstances of the case, this Court cannot tolerate the undue advantage obtained by the petitioner by creating illusion, hence the present petition stands dismissed with a further direction to the Director General of Police, Bihar, Patna to take immediate steps for arrest of the petitioner herein.
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> 8. The registry is directed to transmit the copy of the present order to the Director General of Police, Bihar, Patna, forthwith."

7. It appears that the petitioner had challenged the aforesaid order of this Court dated 25.04.2019 passed in Cr. Misc. No. 59909 of 2018 before the Hon'ble Apex Court, however, the same stood disposed of by an order dated 22.10.2019 in the following terms:-

> "In the facts of the case, we are of the view that if the petitioner is ready and willing to make a deposit of Rs. 50,00,000/- (Rupees fifty lakhs only) before the High Court, he should be afforded an opportunity to do so along with further opportunity to pay the balance amount within a suitable time frame. If the petitioner is ready and willing to do so, he may approach the High Court, in which event the High Court may consider the matter once again."

8. In pursuance of the aforesaid order dated 22.10.2019 passed by the Hon’ble Apex Court, the petitioner has filed the present petition for grant of anticipatory bail to the petitioner herein in connection with Fatuha P.S. Case No. 388 of 2017, pending before the learned court of A.C.J.M., Patna City for offence under Sections 406 and 379 of the Indian Penal Code.

9. The present case was taken up on 12.12.2019 and on the said date, the learned counsel for the petitioner had produced three cheques totalling to a sum of Rs. 50,00,000/-, which were handed over to the learned counsel appearing for the Opposite Party No.2 and the matter was then adjourned to 19th December, 2019 in order to ascertain as to whether the aforesaid cheques of Rs. 50,00,000/- (Rs. Fifty lakhs only) have been credited in the account of the Opposite Party No.2 or not. The matter was again taken up on 21.01.2020 and this Court was apprised that the aforesaid cheques of Rs.50 lacs have been honoured and credited in the account of the opposite party no.2. In fact, this Court had taken initiative by facilitating a negotiation in between the parties so that a consensus can be arrived at and though the learned counsel for the opposite party no.2 had proposed to fix instalment of a sum of Rs. 5 lacs, to be paid every month till the balance amount of Rs. 55 lacs was liquidated, nonetheless, with the intervention of this Court, it was *prima facie* agreed in between the learned counsel for the parties, that in case this court fixes instalment @ of Rs. 2 lacs per month, the same would be reasonable. Accordingly, this Court had instructed the learned counsel for the petitioner to file appropriate supplementary affidavit containing an undertaking of the petitioner to the said effect.

10. This Court is amazed at the conduct of the petitioner inasmuch as a supplementary affidavit has now been filed on 06.02.2020 on behalf of the petitioner, wherein it has been circumspectly and cleverly stated that the petitioner undertakes to pay a sum of Rs. One lakh only per month for a period of one year and thereafter a sum of Rs. 1,50,000/- per month, till the final payment of the admitted amount. This Court is of the view that the proposal of the petitioner for making payment @ Rs. one lakh per month is too trivial, taking into account the first undertaking given by the petitioner, as far back as on 31.1.2018, to pay a sum of Rs. 2 crores within a period of nine months. However, despite lapse of about 25 months, the petitioner has still failed to make payment of the aforesaid sum of Rs. 2 crores, as undertaken to be paid to the Opposite Party No.2. This Court further finds that though the total outstanding amount to be paid by the petitioner to the opposite party no.2 was/ is a sum of Rs. 3.60 crores, this Court had permitted the petitioner to deposit a sum of Rs. 2 crores only, as undertaken voluntarily by the petitioner, taking into account the petitioner's genuine willingness to make good the loss caused to the opposite party no.2, as also taking a lenient view of the matter, but on the contrary, the petitioner has constantly flouted the orders of this Court, has been filing frivolous multiple petitions from time to time, has engaged in multiplicity of litigation, has also abused the process of the court and during the interregnum period has been successful in enjoying interim protection from arrest, which has also resulted in the petitioner absconding from investigation, consequently leading to incomplete investigation and may be tampering/destroying of evidence on account of huge passage of time from the date of lodging of the FIR in question i.e 4.9.2017.

11. Nevertheless, this Court, in view of the order of the Hon'ble Apex Court dated 22.10.2019, had granted further opportunity to the petitioner to pay the balance amount within a suitable time frame, but then the petitioner has again taken this Court for a ride by initially agreeing to pay a sum of Rs. 2 lacs per month for liquidating the balance amount of approximately Rs. 55 lacs, however, subsequently the petitioner has taken a somersault by filing a supplementary affidavit, wherein the petitioner has agreed to pay only a sum of Rs. One lakh initially for a period of one year and thereafter Rs. 1,50,000/- per month, till the final payment of the admitted amount. This Court, upon reconsideration of the matters afresh, is of the view that the conduct of the petitioner, which has all through out been deplorable, is still the same and even more calamitous, which is apparent from the facts and circumstances stated in the preceding paragraphs herein above. In fact the petitioner has abused the trust placed in him by this Court. Considering the aforementioned facts and circumstances of the case as also for the grounds mentioned herein above, this Court finds itself constrained to grant any further indulgence to the petitioner herein, thus, the present petition stands dismissed, being devoid of any substance, even on merits.

(Mohit Kumar Shah, J)

Tiwary/-

AFR/NAFR	AFR
CAV DATE	N/A
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