

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 75111 of 2019

Arising Out of P.S. Case No.-92 Year-2017 Thana- BATH District- Bhagalpur

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Kumar Prabhakar @ Prabhakar Singh @ Prabhakar Kumar, aged about 45 years, Male, Son of Ashok Kumar Singh @ Ashok Kumar, Resident of Village - Rasidpur, P.S.- Bath, District- Bhagalpur, at Present resident of G.C. Banarjee Road Muhdichak, P.S.- Tilkamanjhi, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Dharmendra Kumar, S/o Sri Brahamdeo Prasad Singh, R/o Village- Pipra, PS- Bath, District- Bhagalpur.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ranjan Kumar Jha, Advocate
For the Opposite Party/s : Mr. Murli Dhar, Advocate

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 27-05-2020

The matter has been heard *via* video conferencing due to lockdown imposed on account of the COVID-19 pandemic.

2. Heard Mr. Ranjan Kumar Jha, learned counsel for the petitioner; Mr. Murli Dhar, learned APP for the State and Mr. Vishwanath Singh, learned senior counsel along with Mr. Sanjay Kumar Singh, learned counsel for the informant-opposite party no. 2.



3. The petitioner is in custody in connection with Bath PS Case No. 92 of 2017 dated 06.08.2017 instituted under Sections 406 and 420 of the Indian Penal Code.

4. As per the FIR, the petitioner is accused of taking money on the pretext of getting certain lands transferred in favour of the family members of the informant, which was not done.

5. Learned counsel for the petitioner submitted that from a plain reading of the FIR, it is clear that the allegation is that money was taken on the specific plea that certain lands would be transferred to the informant's wife and brother-in-law but the same was not done. It was submitted that the same is a purely civil dispute for which the only remedy available is either to move before the Civil Court in a suit for specific performance or in the alternative in money suit for recovery of the amount alleged to have been given to the petitioner. It was submitted that lodging of an FIR is patently an abuse of the process of the Court. Learned counsel submitted that due to such malicious prosecution, the petitioner is in custody since 10.06.2019.

6. Learned APP submitted that the petitioner has taken money for getting certain lands transferred through registered sale deed in favour of the family member of the informant which not



having been done clearly shows criminal intent and the prosecution is maintainable.

7. Learned counsel for the informant submitted that the petitioner had earlier moved before the Court below itself for Anticipatory Bail in which he had agreed to return the money in installments but the same has not been done. Thus, it was submitted that the petitioner is liable to return the money to the informant. Learned counsel further submitted that the petitioner has taken money from several persons which clearly shows that there was intention to cheat right from the beginning. It was submitted that for the same land, money having been taken from various persons, amounts to fraud which the Court would take cognizance of.

8. Learned counsel for the petitioner, at this juncture, took a categorical stand that no other case has been filed against him with the allegation that the petitioner had taken money from other persons also for the same piece of land, which is the subject matter of the present case. It was submitted that the Court may verify such categorical stand on behalf of the petitioner. Further, it was submitted that whatever stand the petitioner may taken before the Court below, was in a different proceeding and for the purpose of seeking Anticipatory Bail at the relevant point of time and such



undertaking by the petitioner would not bind him in the present case, where he is seeking bail after being in custody for almost one year, despite the fact that criminal proceeding itself is *mala fide* and not maintainable.

9. Learned counsel for the informant drew the attention of the Court to paragraph no. 11 of the application, where the following statement has been made:

“11. That it is further been humbly stated herewith that petitioner is now in jail custody and he under takes that he will abide all the terms and condition of the order dt. 11.06.2018 passed in Anticipatory Bail application no. 251 of 2018 and he is ready to pay the amounts of the informant in same way.”

10. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, let the petitioner be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) with two sureties of the like amount each to the satisfaction of the learned ACJM, XIIIth, Bhagalpur in Bath PS Case No. 92 of 2017, subject to the conditions (i) that one of the bailors shall be a close relative of the petitioner, and (ii) that the petitioner shall cooperate in the case and be present before the Court on each and every date. Failure to cooperate or being absent on two consecutive dates, without sufficient cause, shall lead to cancellation of his bail bonds.



11. The application stands disposed off in the
aforementioned terms.

(Ahsanuddin Amanullah, J.)

P. Kumar / Anand Kr.

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