

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30626 of 2022

Arising Out of PS. Case No.-7 Year-2021 Thana- VISHNUPAD District- Gaya

VIMAL KUMAR Son of Sri Gopal Prasad Resident of Mohalla - Manpur,
Durga Asthan, Post office - Buniyadganj, Police Station- Buniyadganj,
District - Gaya (Bihar).

... .. Petitioner/s

Versus

THE STATE OF BIHAR.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Saket Gupta

For the Opposite Party/s : Mr. Bishweshwar Ram

CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

2 08-09-2022 Heard both sides.

The petitioner apprehends his arrest in connection with Vishnupad P.S. Case No.07 of 2021, registered for the offences punishable under Sections 406, 420 and 34 of the Indian Penal Code.

The petitioner is said to have taken loan from the bank but he did not return the loan amount.

Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in the present case. It is submitted that the petitioner has got no criminal antecedent as stated in paragraph-3 of the bail application. It is further submitted that the father of the petitioner has already been granted anticipatory bail by the learned court below itself. It is submitted that the bank has also



filed a case in DRT which is pending. Learned counsel for the petitioner placed reliance on the judgment of the Hon'ble Supreme Court passed in Criminal Appeal No. 9 of 2019 (Arising out of SLP(Crl.) No.5223 of 2018).

The learned APP for the State opposed the prayer for anticipatory bail of the petitioner.

Paragraph-14 of the judgment on which the learned counsel for the petitioner placed reliance reads as under:

*“14. Now coming to the charge Under Section 415 punishable Under Section 420 of Indian Penal Code. In the context of contracts, the distinction between mere breach of contract and cheating would depend upon the fraudulent inducement and mens rea. (See **Hridaya Ranjan Prasad Verma v. State of Bihar**, MANU/SC/0223/2000 : (2000) 4 SCC 168). In the case before us, admittedly the Appellant was trapped in economic crisis and therefore, he had approached the Respondent No. 2 to ameliorate the situation of crisis. Further, in order to recover the aforesaid amount, the Respondent No. 2 had instituted a summary civil suit seeking recovery of the loan amount which is still pending adjudication. The mere inability of the Appellant to return the loan amount cannot give rise to a criminal prosecution for cheating unless fraudulent or dishonest intention is shown right at the beginning*



of the transaction, as it is this mens rea which is the crux of the offence. Even if all the facts in the complaint and material are taken on their face value, no such dishonest representation or inducement could be found or inferred.

Taking into consideration the facts and circumstances of the case, let petitioner, above named, in the event of his arrest or surrender before the learned court below within a period of six weeks from today, be enlarged on bail on furnishing bail bond of Rs.25,000/- (rupees twenty five thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Gaya in connection with Vishnupad P.S. Case No.07 of 2021, subject to the conditions laid down under Section 438(2) of the Code of Criminal Procedure.

(Anjani Kumar Sharan, J)

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