IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2334 of 2016

Arising Out of PS. Case No.-482 Year-2014 Thana- SHRIKRISHNAPURI District- Patna
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Mihir Kumar Jha, Son of late Ramakant Jha, Resident of M-3/10, S.K.Puri, Police Station S.K. Puri, District Patna.

... ... Petitioner/s

Versus

1. The State of Bihar
2. Branch Manager, State Bank of India, Sri Krishnapuri Branch, Patna.

... ... Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 2669 of 2016

Arising Out of PS. Case No.-482 Year-2014 Thana- SHRIKRISHNAPURI District- Patna
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Rita Thakur, Wife of Shri Arun Kumar Thakur, Resident of Professors Colony, Forbesbganj, P.S. - Forbesganj, District - Araria

... ... Petitioner/s

Versus

1. The State of Bihar
2. Branch Manager, State Bank of India, Sri Krishnapuri Branch, Patna

... ... Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 2334 of 2016)

For the Petitioner	:	Mr. Manik Vedsen, Advocate
		Mr. Pawan Kumar, Advocate
For the State	:	Mr. J.N. Thakur App

(In CRIMINAL MISCELLANEOUS No. 2669 of 2016)

For the Petitioner	:	Mr. Kishore Kumar Thakur, Advocate
		Mr. Braj Kishore Singh, Advocate
For the State	:	Mr. Nityanand Tiwari, APP
For the S.B.I.	:	Mr. Anjani Kumar Mishra, Advocate

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CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH

C.A.V. ORDER

30 07-12-2022 Both the anticipatory bail applications have been filed in connection with Shri Krishnapuri P.S. Case No.482 of 2014 and as such with the consent of the parties they were heard together and are being disposed of by a common order.

The petitioners in both the anticipatory bail applications apprehend their arrest in connection with Sri Krishnapuri P.S. Case No. 482 of 2014 registered for the offences punishable under Sections 406, 420, 467, 468, 471 and 120B of the Indian Penal Code.

Brief facts which are necessary for deciding the present anticipatory bail applications are that a written complaint was filed by one Ashwani Kumar Verma, the then Branch Manager of Krishnapuri Branch of the State Bank of India, before the S.H.O. Shri Krishnapuri Police Station, alleging therein that in the year 1995, one M/S Astha Enterprises, a partnership firm of Mihir Kumar Jha (petitioner in Cr.Misc No. 2334 of 2016), Rita Mishra (co-accused) and Rita Thakur (petitioner in Cr.Misc No. 2669 of 2016) was granted cash credit Limit of Rs. 24 Lacs by the State Bank of India (Complainant Bank) to carry out its businesses of distribution of medicines. The collateral property which was mortgaged with the Bank was 4 kathas of land bearing plot no.662, Tauzi No. 5224, Khata No. 667, P.S. Danapur (hereinafter referred to as Danapur Property) and 1 Bigha and 10 Katha of land bearing Municipal Plot No.690, Sheet No. 34, Ward No.3, Circle No. 8/A, Holding No. 455, P.S. Kadamkuan (hereinafter referred to as Kankerbagh property).

On the request of the partners of M/S Astha Enterprises, the Bank raised the loan limit from Rs. 24 Lacs to Rs.40 Lacs in the year 1997 and thereafter further increased to Rs.50 Lacs in the year 1998. In the year 2003, the Bank learnt that the mortgaged Kankerbagh property was sold by the mortgagers. Therefore, the Bank asked the partners of M/S Astha Enterprises to replace the security and on their failure to do so the account was declared as NPA in the year 2004. On the failure on the part of the partners to replace the security or to repay the outstanding dues, the bank for recovery of its loan of Rs.69.51 Lacs resorted to filing of an application under the SARFAESI Act before the Debt Recovery Tribunal on 01.02.2008 and tried to take possession of mortgaged assets under the SARFAESI Act. It then surfaced that the mortgaged Danapur property was under litigation in Title Suit No. 491 of 87/378 of 83 in the Court of Sub-Judge and order was passed on 28.07.1998 whereby it was held that the Seller namely Shri Dadan Tiwary from whom one of the partners of M/S Astha Enterprises, namely Rita Thakur (petitioner in Cr.Misc No. 2669 of 2016) had purchased the said Danapur property did not hold a valid title and the Danapur Property belonged to one Phool Kumari Devi. Consequent upon the aforesaid order passed by the learned Sub-Judge the revenue authorities in the year 2010 cancelled the jamabandi of land which was recorded in the name of Shri Dadan Tiwary and others. Thus, it is alleged that Rita Thakur (petitioner in Cr.Misc No. 2669 of 2016) had deliberately concealed the fact which was into her knowledge that the Danapur property was under litigation and it belonged to Smt. Phool Kumari Devi and that the sale deed was fabricated. Further, it has been alleged that one-third of the mortgaged Kankerbagh property was sold prior to mortgage and rest two-third was sold after its mortgage in favour of the Bank. The partners of M/S Astha Enterprises, (including the petitioners before this court), neither brought these facts in the knowledge of the Bank in the year i.e., at the time of initial sanction of credit, nor when the credit limit was enhanced in the year 1997 and 1998. Hence, they had intention to cheat the Bank since inception.

On the basis of the above written report the present case was registered against the petitioners and others under Sections 406, 420, 467, 468, 471 and 120B of the Indian Penal Code.

Learned counsel for the petitioners submitted that the petitioners have been made accused in the present case due to mistake of fact. There is no allegation of tampering with the evidence of this case against the petitioners. The present prosecution is a malafide prosecution and a sheer abuse of the process of law. The allegations levelled in the written report are misconceived, vague and baseless. The case is triable by Magistrate. In support of the submissions advanced by him, learned counsel had argued that so far, the allegation of selling of the mortgaged Kankerbagh property is concerned, the same is against the guarantors and not the petitioners. Even if, for the sake of argument, it is accepted that the petitioners had any role to play in selling of the mortgaged Kankerbagh property, the property still remains mortgaged with the Bank and thus there is no dilution in the security given to the Bank. With respect to the allegation regarding the mortgaged Danapur property is concerned, it was argued that the petitioner Smt. Rita Thakur had no knowledge that the vendor namely Dadan Tiwary, from whom she purchased the said property, by a valid sale deed, had an imperfect title and the property was under litigation. Thus, in absence of any knowledge regarding the dispute over the said property, no mens rea can be attributed towards her in the present case. Learned counsel for the petitioners had next argued that the Bank has suppressed material facts and events and has not approached the law with clean hands. He had drawn the attention of this court to the fact that admittedly it is the case of the prosecution that the Bank came into knowledge of these facts in the year 2003, however the F.I.R. came to be registered as late as in the year 2014 which leads to the inference that by filing of the instant case the Bank has tried to bring a purely civil dispute in the realm of a criminal case after a lapse of eleven years. Lastly, it was argued that as on date also, both the properties are still mortgaged with the Bank and the market value of the said properties is far high than the outstanding dues. The Bank is disinterested in auction-cum-sale of the collateral mortgaged properties for the reason best known to it and is only inclined to harass the petitioners by prosecuting them in the present case. Learned counsel for the petitioner has relied upon the case of ***Arnesh Kumar vs. State of Bihar*** reported in ***(2014) 8 SCC 273*** and ***Satender Kumar Antil vs. C.B.I. and Anr.*** reported in ***AIR 2022 SC 3386***.

On the other hand, learned counsel for the Bank while opposing the prayer of grant of anticipatory bail to the petitioners argued that the petitioners had intention to cheat the Bank from the beginning. He has reiterated the allegations levelled in the written report but could not controvert the fact that the property is still mortgaged with the Bank and what restrains the Bank from getting the mortgaged property sold by auction. However, from perusal of the counter-affidavit filed on behalf of the Bank it appears that the Bank has shown its incapacity to get the mortgaged property auctioned.

Learned A.P.P. has adopted the arguments advanced by the Bank and has opposed the prayer for grant of anticipatory bail to the petitioners.

At this stage, it is pertinent to record that, on the prayer so made by the parties, an attempt was made by this court to get the matter settled by way of mediation. Therefore, vide order dated 18.03.2016 the matter was referred to Patna High Court Mediation Centre. However, the report of the Mediator shows that the parties failed to resolve their dispute by way of mediation. Hence, these applications are being decided on merit.

After hearing the rival submissions and perusal of the record of this case, this court finds that the collateral property is still mortgaged with the Bank and ample opportunity was given to the Bank for getting the mortgaged property sold by way of auction. However, from the record it is evident that the Bank on multiple, for one reason or the other, has failed to get its outstanding dues settled by selling the mortgaged property by way of auction. Further, it is also not in dispute that the value of the mortgaged property is less than the outstanding dues of the Bank. Rather, it would be relevant to mention here that

Valuation Report of the mortgaged Kankerbagh property has been annexed by the Bank as Annexure-A to its Counter Affidavit filed in the year 2017 and from perusal of the same it appears that the said Valuation Report, prepared by a Regd. Govt Valuer has assessed the market value of land to be Rs.15 Crores and 37 Lacs and the Realizable Value to be Rs. 12 Crores 29 Lacs.

Therefore, considering aforesaid facts and circumstances, particularly the fact that the collateral property is still mortgaged with the Bank and the Bank can safeguard its interest by getting the mortgaged property sold by way of auction coupled with the fact that admittedly the mortgaged property is of more value than the outstanding dues of the Bank, as also the principles laid down by the Hon'ble Supreme Court in the case of ***Arnesh Kumar (supra)***, this court is inclined to grant the privilege of anticipatory bail to the petitioners. Hence, the provisional anticipatory bail granted to Mihir Kumar Jha (petitioner in Cr.Misc No. 2334 of 2016) vide order dated 20.01.2016, passed by the then Co-ordinate Bench of this Court is hereby confirmed and let Rita Thakur (petitioner in Cr.Misc No.2669 of 2016), in the event of arrest or surrender before the learned court below within a period of twelve weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of Mr. Asutosh Khetan, Judicial Magistrate, 1st class, Patna in connection with Sri Krishnapuri P.S. case No.482 of 2014/G.R. No.8249 of 2014.

With the aforesaid observation/direction, both the anticipatory bail applications are allowed.

(Sudhir Singh, J)

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