IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48942 of 2021

Arising Out of PS. Case No.-14 Year-2018 Thana- ECONOMIC OFFENCES, BIHAR District- Patna

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ARUN PRAKASH, Son of Late Gopal Nandan Sahay, R/o Quarter No. Slum-34, Kankarbagh Colony, P.S.- Kankarbagh, District- Patna- 800020.

... ... Petitioner

Versus

The State of Bihar through the S.P., Economic Offence, Unit. Bihar

... ... Opposite Party

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Appearance :

For the Petitioner : Mr. Rama Kant Sharma, Senior Advocate
Mr. Lakshmi Kant Sharma, Advocate

For the Opposite Party : Mr. Vishwanath Prasad Sinha, Senior Advocate
Mr. Vijay Anand, Advocate

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR

ORAL ORDER

6 21-03-2022 Heard Sri Rama Kant Sharma, learned senior counsel assisted by Sri Laxmi Kant Sharma, learned counsel for the petitioner and Sri Vishwanath Prasad Singh, learned senior counsel assisted by Sri Vijay Anand, learned counsel for the Economic Offences Unit.

Learned counsel for the petitioner is permitted to remove defect(s), as pointed out by the office, if any, within a period of four weeks from today.

This application for anticipatory bail arises out of Economic Offences P.S. Case No. 14 of 2018 for the offence punishable under Sections 406, 409, 419, 420, 467, 468, 471, 472 & 120-B/34 of the Indian Penal Code. Subsequently, on the order of the S.D.J.M., Patna, offences under Section 13(2) read with Section 13(i)(a) of the Prevention of Corruption Act was also added.

As per the prosecution case, the accused persons have taken a huge amount of loan i.e. more than two crores from a Public Sector Bank namely, Punjab National Bank on the basis of forged and fabricated documents. The petitioner, who happens to be a panel lawyer of the Punjab National Bank, is said to have given the Title Search Report, on the basis of which, the loan was disbursed. The land, in question, which was mortgaged was already sold and the persons who have taken loan have no right, title or interest over the land. During investigation, the loanees claimed that they have not taken the loan and they also took some other defence.

Sri Sharma, learned senior counsel for the petitioner submits that the petitioner is a practicing lawyer and there is no criminal intention on his behalf in giving report and he has acted bonafidly. He further submits that after due verification he has submitted the report.

Sri Sharma, learned senior counsel has relied upon a decision of the Apex Court rendered in the case of ***Central Bureau of Investigation, Hyderabad vs. K. Narayan Rao***

(Criminal Appeal No. 1460 of 2012) and submits that in that case a lawyer has given legal opinion which resulted in prosecution and the Apex Court has quashed the proceeding and this case is squarely covered by the aforesaid decision.

Sri Sharma, learned senior counsel also submits that though it is not on affidavit but almost the entire loan amount has been repaid and only about Rs.15 lakhs is yet to be repaid. He next submits that borrowers have been granted conditional bail but the orders have not been brought on record.

Disbursal of loan on the basis of forged and fabricated documents to non-existent persons has become quite common these days. A lawyer like the petitioner, who is on the panel of the Bank, is required to give the Title Search Report after proper enquiry/verification which includes the site visit, obtaining report from the office of the Registrar and examining other title documents and not only by signing on dotted lines of the report in favour of proposed loanee. This practice should not be encouraged. Just because the petitioner is a lawyer, he shall not get any sympathy from this Court. If a lawyer commits a crime, his case should be dealt with very strictly as he knows the consequences of crime.

The argument of Sri Sharma, learned senior counsel that mere giving a legal opinion should not invite prosecution, no doubt, has been accepted by the Courts but when a lawyer gives a report on the basis of forged and fabricated documents, which he should have found out after proper verification/enquiry, is not entitled to the protection in light of the aforesaid decision of the Apex Court.

In the present case, the petitioner has given report without examining the documents which were forged documents and he has not exercised his duties properly only with a view to benefit himself financially.

The argument of Sri Sharma, learned senior counsel for the petitioner that the loan is being repaid will also not help the petitioner as once the crime has been committed, mere repayment of loan amount, will not entitle the petitioner for grant of anticipatory bail.

For the reasons discussed above, in the opinion of this Court, this is not a fit case for grant of anticipatory bail to the petitioner. Accordingly, this anticipatory bail application is dismissed.

(Sandeep Kumar, J)

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