IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40190 of 2022

Arising Out of PS. Case No.-25 Year-2020 Thana- VISHNUPAD District- Gaya

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Motilal Patwa @ Moti Lal, S/o Late Hulash Ram Patwa, Resident of Manpur Patwa Toli, Semraj Park, Manpur, P.S.- Buniyadganj, District- Gaya

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Saket Gupta, Advocate
For the Opposite Party/s : Mr. Raj Kishor Singh, APP
For Punjab National Bank: Mr. Mritunjay Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

2 15-09-2022 The matter is listed on the urgent motion slip filed by the learned counsel for the petitioner praying therein, that the mother of the petitioner is severely ill and she has been referred by the local hospital to Higher Center by doctor for better management of her and the petitioner being the only son of his mother is in custody for more than two years.

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

3. Heard Mr. Saket Gupta, learned counsel appearing on behalf of the petitioner, Mr. Mrityunjaya Kumar learned counsel appearing on behalf of the PNB and the learned counsel for the State.

4. The petitioner seeks regular bail, who is in custody

in connection with Vishnupad P.S. Case No. 25 of 2020 registered for the offences punishable under Sections 406 and 420 of the Indian Penal Code.

5. The prosecution case is based on a written complaint filed by Senior Branch Manager of Punjab National Bank, Chand Chaura Branch, Gaya, alleging therein that the petitioner being proprietor of M/s Rahul Textiles has availed a cash credit loan facility of Rs. 80,00,000/- (Rupees Eighty lakhs) on 05.03.2014 from the branch of the informant. The total outstanding of the loan amount comes to Rs. 87,57,549.76. It is further alleged that on 01.08.2019, the authorised persons of bank inspected the business premises of the petitioner, they have found that the business of the petitioner was not in operation. It is also alleged that the relative of the petitioner refused to locate the business premise, stock, machinery and other stocks to the authorised persons, which resulted into lodging of the present F.I.R.

6. Learned counsel for the petitioner submits that way back in the year 2014, the bank had sanctioned loan facility under the CGTMSE scheme on 05.03.2014 and after sanctioning the loan amount, the petitioner started his business and had regularly paid installment of the loan amount from 05.03.2014 to 07.08.2019, in the meantime, he was apprehended

in connection with Civil Lines P.S. Case No. 69 of 2018 and even while he was in judicial custody, he continued to pay the installment till August 2019. He next submits that in fact prior to the institution of the present F.I.R., the bank had already filed Original Application, bearing O.A. No. 678 of 2018 under the SARFAESI Act, 2002 before the Debt Recovery Tribunal (hereinafter referred to as 'the DRT'), Patna for recovery of a loan amount and the matter is still pending before the DRT for final adjudication. He further submits that he is giving undertaking before this Court that whatever order would be passed by the DRT, he would be guided by the same and would certainly honour the same. He next submits that in the present case, the petitioner was remanded on 05.02.2020 and since then he is in custody and only on account of this fact he is not in a position to effectively pursue his remedy or to pay the interest amount or outstanding dues. The learned counsel for the petitioner also give undertaking that after release of the petitioner would pursue the matter bonafidely in the DRT.

7. Learned counsel for the petitioner also relied upon the judgment rendered by the Hon'ble Supreme Court in case of **Satishchandra Ratanlal Shah Vs. State of Gujarat and Ors**, reported in **(2019) 9 SCC 148.** It would be apt to reproduced paragraph nos. 15, 16 and 17 of the said judgment hereinbelow:

"15. Moreover, this Court in a number of cases has usually cautioned against criminalizing civil disputes, such as breach of contractual obligations [refer to Gian Singh v. State of Punjab, (2012) 10 SCC 303]. The legislature intended to criminalize only those breaches which are accompanied by fraudulent, dishonest or deceptive inducements, which resulted in involuntary and inefficient transfers, under Section 415 of IPC.

16. However, the High Court appears to have been carried away by the moral element involved in the breach of promise and made certain observations. Being a policy consideration, such suggestions need to be restricted. The aforementioned observations of the High Court were not only unnecessary for the adjudication of this matter, but the same could have been understood as casting some kind of aspersions on the accused. This clearly reflected a loaded dice situation against the appellant herein.

17. In our considered opinion, the High Court should have maintained judicial restraint and desisted from making such general observations at this stage of the criminal proceeding, as they may have had a bearing on the adjudication of the trial. Therefore, the observations made in paragraphs 42 and 43 of the impugned judgment stand expunged."

8. While concluding his argument, he submits that in

all the cases, as has been mentioned in paragraph no. 3 of the petition, the petitioner is on bail and so far the other cases are concerned, there is no requirement of any custodial interrogation and keeping the petitioner behind the bar would serve no further purpose in the financial matter.

9. On the other hand, learned counsel for the Bank vehemently opposes the bail application and submits that the fraudulent act of the petitioner is apparent from the fact that when the authorised officers of the Bank inspected the business premises of the petitioner, they have found that the business of the petitioner was not in operation and this fact shows the dishonest and fraudulent intention of the petitioner. He next submits that at present there is an outstanding dues of Rs. 1,22,00,000/- against the petitioner. He lastly submits that if the petitioner would be released on bail, it would be difficult to realize the outstanding dues of the bank. He also submits that the petitioner has multiple criminal antecedent.

10. Regard being had to the submissions made on behalf of the parties and considering the fact that for recovery of the outstanding dues of the Bank, an Original Application bearing No. 678 of 2018 is also pending before the DRT, which was filed prior to the institution of the present F.I.R. and taking into account the conduct of the petitioner that he had been

regularly paying his installment amount during the period between 05.03.2014 to 07.08.2019 and, moreover, he is in custody since 05.02.2020 and also on bail in all other cases, let the petitioner, named above, be released on bail on furnishing bail bonds 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. 25 of 2020 subject to the condition that one of the bailors will be the close relative of the petitioner with further conditions which are as follows:-

(i) The petitioner will cooperate in conclusion of the trial.

(ii) He will remain present on each and every date of trial till disposal of the case.

(iii) He will not try to tamper with the evidence or intimidate the witnesses to delay the disposal of trial.

(iv) In the event of default of two consecutive dates without any cogent reason, his bail bonds will liable to be cancelled.

(Harish Kumar, J)

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