

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.39323 of 2020

Arising Out of PS. Case No.-12 Year-2015 Thana- ECONOMIC OFFENCES, BIHAR
District- Patna

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RAKESH SRIVASTAVA @ RAKESH KUMAR SRIVASTAVA Son of Abhay Narayan Srivastava @ Abhay Narayan Prasad Resident of Sharada Mission, Maulagudi, Pradhan Nagar, P.S.- Pradhan Nagar, District - Darjleeing, West Bengal.

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Economic Offence Unit, Patna Bihar through its S.P.
3. Md. Kaisar Jamal, Son of Md. Jahir, Resident of vill – Sarmestpur, P.S. - Mahnar, District – Vaishali.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Ms. Kumkum Mukherjee, Adv.
For the Opposite Party/s	:	Mr. APP
For EOU	:	Mr. Vishwanath Prasad Singh, Sr. Adv.
		Ms. Soni Srivastava, Adv.
For O.P. No. 3.	:	Mr. Yogesh Chandra Verma, Sr. Adv.
	:	Mr. Ramesh Kumar Thakur, Adv.
	:	Mr. Suryanarayan Roy, Adv.
	:	Mr. Ashok Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

12 03-03-2022 This matter was heard on 20.01.2022 when

this Court had dictated the order rejecting the prayer for anticipatory bail. However, before the order could be signed, a request was made on the next date by the learned counsel for the petitioner that before the order of rejection is pronounced, the Interlocutory Application No. 1 of 2022, seeking initiation of prosecution against opposite party no. 3 for having made a wrong statement before this Court



inviting the mischief of Section 192 of the Indian Penal Code, be first decided and then the final order be passed in the anticipatory bail application.

Precisely for this reason that the order in the bail petition was postponed.

While passing this order the Court noted a mistake in the order dated 27.01.2022, wherein it has been recorded that the prayer for anticipatory bail of the petitioner was rejected on 18.08.2020. This refers to the rejection order passed by the court below in A.B.P. No. 137/2020 and not of this Court.

Today, the matter has been heard on aforesaid Interlocutory Application.

Re: Interlocutory Application No. 1 of 2022

Ms. Kumkum Mukherjee, the learned counsel for the petitioner / applicant seeks initiation of proceeding against opposite party no. 3 on the ground that a wrong statement has been made by opposite party no. 3 with respect to his having deposited the amount in question with the company and a further wrong statement before the



learned Magistrate under Section 164 Cr.P.C..

This Court is afraid, such statement cannot be the basis for accepting the prayer of the petitioner for initiating any proceeding under Section 340 of the Code of Criminal Procedure as none of those statements were made before this Court. There is yet another aspect to it. Whether such statement is false or true cannot be decided at the present.

The Interlocutory Application No. 1 of 2022 has no merits and the same is dismissed.

Criminal Miscellaneous No. 39323 of 2020.

Heard Ms. Kumkum Mukherjee, the learned Advocate for the petitioner, Mr. Vishwanath Prasad Singh, Sr. Advocate assisted by Ms. Soni Srivastava for Economic Offence Unit and Mr. Surya Narayan Roy, learned counsel for the informant.

The petitioner seeks bail in anticipation of his arrest in connection with Economic Offence P.S. Case No. 12 of 2015 instituted for the offences under Sections 420, 406 and 120B of the Indian Penal Code.



The informant has alleged that he had purchased 90 redeemable preference shares, each of the value of of Rs. 100/- with the redemption date of 29th of January 2019. However, it was alleged by him that he and many other investors were defrauded and there is no hope that his money would be redeemed.

The learned counsel for the petitioner, however, has submitted that even if the averments made in the F.I.R. is taken on its face value, no offence can at all be said to have been made out against the petitioner or other accused persons merely for the reason that the maturity date of those shares were far ahead of the time when the F.I.R. was lodged. Without waiting for the maturity of such shares, a case has been lodged by the informant, who is one of the erstwhile agents of the company of which, the petitioner is the Managing Director.

The Company is run under the name and style of Sharda Pleasure and Adventure Ltd. with its Headquarters at Siliguri. The informant, it has been urged on behalf of the petitioner, in order to misappropriate the money which he



had taken from the company for distributing to the investors has been misappropriated by him and the present F.I.R. is only an attempt to provide a shield to him against any prosecution in future if other investors ever complain of their shares not being redeemed. It has been submitted on behalf of the petitioner that the court below perhaps has mistaken the company of the petitioner to be the one which was a non-banking financial institution having branches all over the country and facing litigation across the country. The company is not a non-banking financial institution but according to its memorandum of association, it is a public limited company with the main object being to carry on in India and elsewhere the business of contractors, turn-key contractors, designers, architects, decorators, consultants, financiers and brokers of all types of construction and for development work of roads, bridges, houses, offices, godowns etc.. The object of the company is also to issue all types of shares and debentures and securities, stocks as well as commercial papers in lieu of services rendered by the brokers, agents and the advisers.



It is precisely for this reason, it has been argued, that only debentures were issued and the informant has chosen to file a case in his representative capacity without specifying the details. It has also been submitted that in other cases in which the petitioner or the company has been made accused in another State, the petitioner is on bail. So far as this case is concerned, it has been submitted that the petitioner came to know about it only after issuance of warrant of arrest whereafter all attempts were made to obtain anticipatory bail from the court. It has been submitted on behalf of the petitioner that he, therefore, has not absconded but has surrendered to the process of law. It has further been submitted that approximately 80% of the debentures have been redeemed and the rest 20% could not be handed over to the investors only for the reason that approximately 14 bank accounts of the petitioner has been seized by the various Investigating Agencies including the C.B.I.

Be that as it may, in order to prove the bonafides, the company of which the petitioner is said to be



the Chairman –cum- Managing Director has been able to keep the company afloat by redeeming the debenture shares on demand. Precisely for this reason, it has been argued that in other cases, the petitioner has been granted bail. Lastly, it has been submitted that the F.I.R. has been registered in the year 2015 and shortly thereafter, the Economic Office Unit took up the investigation. That the investigation in this case have yet not been concluded is an evidence good enough to demonstrate that no incriminating material could be collected by the E.O.U. with respect to the functioning of the company having fallen foul of the SEBI directions. No fault has been found with respect to floating of the company or its objects. It is quite different that the company fell in rough weather and many cases were lodged against its employees. It has further been submitted on behalf of the petitioner that SEBI has already recovered Rs. Ninety Seven Lakhs from the petitioner during the currency period of investigation of this case.

On the other hand, Mr. Vishwanath Prasad Singh, learned senior counsel for the E.O.U has submitted



that the fact that the petitioner is facing prosecution in about five cases, three of which are in the State of West Bengal, is an evidence good enough that the company did not have the necessary wherewithals and funds to issue debentures to the investors. The object of the company may not have been, in the first instance or in the beginning to be bad in the eyes of law but later with the fortunes of the company waning, it was not appropriate for such company to have continued with issuing debentures and beguiling the unsuspecting investors. Apart from this, it has been submitted that several attempts were made to track the petitioner but he was found missing from his Siliguri residence. The process has been set afoot for execution of proclamation under Section 82 of the Code of criminal Procedure. It has also been submitted that the statement made by the petitioner with respect to all the banks of the petitioners having been seized is incorrect. The E.O.U. has seized only one bank account out of fourteen bank accounts which has come to its notice. The E.O.U. is not aware of any such attempt on the part of the petitioner to redeem the debentures issued by the company.



After having heard the learned counsel for the parties, this Court is not inclined to grant anticipatory bail to the petitioner for the sole reason of his not surrendering to the process of law for all this while. Even though, the company of which the petitioner is the Managing Director tried its best to keep the company remain afloat but with such sagging reserves and credibility, money should not have been allowed to be invested in such company.

The prayer for anticipatory bail of the petitioner is rejected.

However, if the petitioner surrenders before the court below and seeks bail, the court below shall take into account all the above noted facts especially that in all other cases in which the petitioner is sought to be prosecuted, he has been granted bail and that effort is being made for redeeming all the dentures and paying back to all the investors and that 80% of all such dues of the company has been amortized and the company intends to respect its commitment, and an order shall be passed without being prejudiced by the fact that the present petition on his behalf



has not been entertained.

The petition stands disposed of accordingly with
the afore-noted observations.

(Ashutosh Kumar, J)

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