IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49299 of 2022

Arising Out of PS. Case No.-428 Year-2021 Thana- GAYA KOTWALI District- Gaya

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PRAVEEN KUMAR SHARMA Son of Sri Sheo Kumar Sharma Resident of Village - Near Gaudiya Math, G.B. Road, P.s.- Civil Line, Distt.- Gaya.

... ... Petitioner/s

Versus

THE STATE OF BIHAR

... ... Opposite Party/s

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with

CRIMINAL MISCELLANEOUS No. 49672 of 2022

Arising Out of PS. Case No.-428 Year-2021 Thana- GAYA KOTWALI District- Gaya

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NIDHI SHARMA Wife of Praveen Kumar Sharma R/O Mohalla - Near Gaudiyan Math, G.B. Road, P.S.- Civil Lines, Dist.- Gaya

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

(In CRIMINAL MISCELLANEOUS No. 49299 of 2022)

For the Petitioner/s	:	Mr. Shashi Ranjan Sinha, Advocate
For the Opposite Party/s	:	Mr. Nand Kishore Prasad, APP
For the Informant/s	:	Mr. Mukul Prasad, Advocate

(In CRIMINAL MISCELLANEOUS No. 49672 of 2022)

For the Petitioner/s	:	Mr. Shashi Ranjan Sinha, Advocate
For the Opposite Party/s	:	Mr. Ram Sevak Choudhary, APP
For the Informant/s	:	Mr. Mukul Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

2 22-12-2022 **CRIMINAL MISCELLANEOUS No.49299 of 2022**

Heard learned counsel for the petitioner, learned counsel for the informant and learned A.P.P. for the State.

The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 406, 420 and 34 of the Indian Penal Code and Section 138 of N.I. Act.

Learned counsel for the petitioner submits that petitioner is a person with clean antecedent and the informant alleges that petitioner and co-accused persons requested him to loan an amount of Rs. 5 lakh for eye operation of the wife of Praveen in 2018, with a condition that the amount would be returned within a year, accordingly the amount was credited in the account of Praveen and his wife Nidhi, thereafter again in 2019 Praveen and Nidhi came and sought loan of Rs. 25 lakh for treatment of Praveen's father in cash, further the amount of Rs. 25 lakh was given on 13..11.2019 in cash, further alleges that the accused persons were not returning the money but on pressure Praveen issued a cheque of Rs. 30 lakh on 02.01.2020 but the cheque on presentation bounced on 18.02.2020, further on 09.03.2020 a legal notice was sent which was replied by the accused persons on 21.03.2020 in which they accepted that cheque of Rs. 30 lakh was issued and the money would be returned within six months i.e., by 21.09.2020 but the money till date has not been returned.

Learned counsel for the petitioner submits that petitioner has been falsely implicated in the present case, it is next submitted that even presuming what has been alleged is true without admitting for the purposes of anticipatory bail then the dispute is purely civil, more so when the informant alleges that the accused persons in their reply had admitted the dues, it is further submitted that by filing a criminal case the money cannot be recovered and the same can be recovered only in accordance with law i.e., either by filing a money suit or by resorting to remedies available in law, it is also submitted that High Court is not a recovery agent for such cases where by putting the person under fear he is asked to return the money. The learned counsel next submits that it absolutely does not stand to reason that why an FIR came to be instituted with respect to bouncing of cheque, when Section 142 of the Negotiable Instrument Act clearly records that a complaint is to be filed and complaint is defined under Section 2(D) of the Cr.P.C., it is next submitted that from perusal of the reply notice of the petitioner, it would manifest that he has accepted all his liabilities including payment of interest, it is thus submitted that the reply was never furnished by the petitioner rather it is a manufactured document as after bouncing of the alleged cheque the informant did not file the complaint in time. The learned counsel next submits that he has already paid all the dues and, in the event, if the informant still is aggrieved he has remedies as aforesaid.

Learned A.P.P. for the State and the learned counsel for the informant oppose the prayer for anticipatory bail of the petitioner, but are not able to rebut the submission of the learned counsel for the petitioner that the dispute is civil and High Court is not a recovery agent. Further, by filing an FIR, the money can never be recovered at best the petitioner can be convicted in a duly constituted trial.

Considering the submissions made by the learned counsel for the petitioner, the petitioner above-named, in the event of his arrest or surrender before the learned trial court within a period of six 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 to the satisfaction of the learned trial court where the case is pending/successor court in connection with Gaya Kotwali P.S. Case No. 428 of 2021 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

The present order has been passed for the purpose of anticipatory bail.

CRIMINAL MISCELLANEOUS No. 49672 of 2022

Heard learned counsel for the petitioner, learned counsel for the informant and learned A.P.P. for the State.

The petitioner apprehends his arrest in a case registered for the offences punishable under Sections 406, 420 and 34 of the Indian Penal Code and Section 138 of N.I. Act.

Learned counsel for the petitioner submits that petitioner is a person with clean antecedent and the informant alleges that petitioner and co-accused persons requested him to loan an amount of Rs. 5 lakh for eye operation of the wife of Praveen in 2018, with a condition that the amount would be returned within a year, accordingly the amount was credited in the account of Praveen and his wife Nidhi, thereafter again in 2019 Praveen and Nidhi came and sought loan of Rs. 25 lakh for treatment of Praveen's father in cash, further the amount of Rs. 25 lakh was given on 13..11.2019 in cash, further alleges that the accused persons were not returning the money but on pressure Praveen issued a cheque of Rs. 30 lakh on 02.01.2020 but the cheque on presentation bounced on 18.02.2020, further on 09.03.2020 a legal notice was sent which was replied by the accused persons on 21.03.2020 in which they accepted that cheque of Rs. 30 lakh was issued and the money would be returned within six months i.e., by 21.09.2020 but the money till date has not been returned.

Learned counsel for the petitioner submits that petitioner has been falsely implicated in the present case, it is next submitted that even presuming what has been alleged is true without admitting for the purposes of anticipatory bail then the dispute is purely civil, more so when the informant alleges that the accused persons in their reply had admitted the dues, it is further submitted that by filing a criminal case the money cannot be recovered and the same can be recovered only in accordance with law i.e., either by filing a money suit or by resorting to remedies available in law, it is also submitted that High Court is not a recovery agent for such cases where by putting the person under fear he is asked to return the money. The learned counsel next submits that it absolutely does not stand to reason that why an FIR came to be instituted with respect to bouncing of cheque, when Section 142 of the Negotiable Instrument Act clearly records that a complaint is to be filed and complaint is defined under Section 2(D) of the Cr.P.C., it is next submitted that from perusal of the reply notice of the petitioner, it would manifest that he has accepted all his liabilities including payment of interest, it is thus submitted that the reply was never furnished by the petitioner rather it is a manufactured document as after bouncing of the alleged cheque the informant did not file the complaint in time. The learned counsel next submits that he has already paid all the dues and, in the event, if the informant still is aggrieved he has remedies as aforesaid, it is also submitted that even the cheque was not issued by the petitioner.

Learned A.P.P. for the State and the learned counsel for the informant oppose the prayer for anticipatory bail of the petitioner, but are not able to rebut the submission of the learned counsel for the petitioner that the dispute is civil and High Court is not a recovery agent. Further, by filing an FIR, the money can never be recovered at best the petitioner can be convicted in a duly constituted trial.

Considering the submissions made by the learned counsel for the petitioner, the petitioner above-named, in the event of his arrest or surrender before the learned trial court within a period of six 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 to the satisfaction of the learned trial court where the case is pending/successor court in connection with Gaya Kotwali P.S. Case No. 428 of 2021 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

The present order has been passed for the purpose of anticipatory bail.

(Satyavrat Verma, J)

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