IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60144 of 2021

Arising Out of PS. Case No.-179 Year-2021 Thana- KOTWALI District- Patna

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1. AWADHESH KUMAR GUPTA S/o- LATE JAGARNATH GUPTA R/o Village- Dholi Bazar, P.O.- Rajendra Agricultural Collage, P.S.- Sakara, District- Muzaffarpur.
2. Sher Bahadur Ray S/o Ram Deni Rai R/o Dighi Khurd, Hajipur, P.S.- Hajipur, District- Vaishali.

... ... Petitioner/s

Versus

THE STATE OF BIHAR .. ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ramakant Sharma, Sr. Adv. Mr. Hemant Kumar, Adv.
For the State	:	Mr.Manoj Kumar
For the Opposite Party		Mr.

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

ORAL ORDER

7 13-09-2022 Heard learned counsel for the petitioners and learned APP for the State.

The instant application for anticipatory bail has been filed by the petitioners apprehending their arrest in connection with Kotwali P.S. Case no. 179 of 2021 instituted for the offence punishable under Sections 406 and 420 of the Indian Penal Code.

As per allegation in the FIR, a company was established in the name and style of 'Minakshi Rural Agri Business Pvt. Ltd' by Late Upendra Kumar Jaiswal, who was the friend of informant's father having its registered office in Village Chandpura, Block-Patepur, District- Vaishali. The petitioners were also shareholders and directors of the company. In the said company, informant had invested Rs. 4,00,000/- in the year 2013 out of which 40,000 equity shares of the said company were allotted to the informant on 18.02.2013 and the market value of the invested amount has increased in value of crores.

Apart from the share company, a cold storage was also established which was looked after by Late Upendra Kumar Jaiswal. Allegedly, the petitioners started taking the affairs of the company in their hands and they have not convened any information about meeting of the shareholders of the company. After demise of Upendra Kumar Jaiswal on 27.07.2020, when informant contacted the petitioners to know about activities of the company and about his investment, he was misbehaved and threatened of dire consequences by the petitioners.

It is further alleged that when the informant contacted the Company Secretary, Chandan Jha and Associate, he came to know that his share of 40,000 equity were got transferred on 08.05.2017 in the name of petitioner no. 1 Awadhesh Kumar Gupta by filling Form MGT-7 in connivance with petitioner no. 2, which is appearing on the website of the Registrar of the Company, Bihar. The petitioners were alleged to have forged and fabricated signature of the informant as well as document of the company and by doing so the petitioners have managed to get the said transfer of shares registered by the Registrar of the Company.

On going through the various documents, informant came to know that petitioners, who were looking after the day to day affairs of the company, had managed to get transfer the shares of the informant as well as other shareholders in their favour and thereafter they filed the information before the Registrar of Company on 03.09.2018.

It is further alleged that informant had filed complaint dated 04.03.2021 before the Registrar of the Company on 5.3.2021 and he came to know that his signature was fraudulently put by the petitioners and the documents relating to transfer of his share were submitted before the Registrar of the Companies.

It is further alleged that petitioners have neither shown nor enclosed any documents as to in what manner the informant had expressed his willingness to transfer the equity shares to another person. Regarding request for transfer of his shares, no materials are brought on record. The petitioners have also not brought any materials on record to show that any meeting of those share holders was called in the Registered Office of the Company. No where is mentioned the date of on which the consideration amount was paid to the informant. Petitioners have tried to fabricate their justification to cover up their criminal act of embezzlement, forgery and cheating. In order to get their personal gain, the accused persons have committed the offence of breach of trust with share holders including the petitioner.

Learned counsel appearing on behalf of the petitioners has submitted that petitioners are innocent and have committed no offence. They have been falsely implicated in this case on false and frivolous allegations. The case is entirely of civil nature. On 22.12.2012 the Company had taken loan of Rs. 5.70 crores from Bank of Baroda for establishing Cold Storage. The informant and other 43 persons were shareholders in the company, who were allotted equity shares of the company. However, due to misfortune, the company could not repay the loan of the Bank within the stipulated period and the loan account of the company was declared non-performing assets on 28.04.2015. Thereafter, on 09.04.2017, the 32 shareholders of the company including the informant expressed their willingness to transfer their shares to some other person. The said proposal of the shareholders for transferring of shares was circulated by the Board of Directors of the Company among the shareholders and, thereafter, the 32 shareholders including the informant surrendered their shares after receiving their consideration amount of executing Form SH-4 (Share transfer deed). The 32 shareholders of the company including the informant surrendered their respective share certificates in the registered office of the company. The Board of Directors of the company had approved the transfer of equity shares of 32 shareholders in the meeting of the Board of Directors held on 8.5.2017.

After efflux of time, the company managed to liquidate the amount of loan taken by the Company from Bank of Baroda on 22.12.2012. The Bank upon receiving the entire amount of loan acknowledged the liquidation of loan by the company on 12.02.2021. The company since then has bloomed its business and day by day it keep on flourishing as a result of which informant developed his greedy eyes upon the Company shares.

On 04.03.2021, the informant filed a complaint case to restore his earlier shares in the Company before the Registrar of the Companies, Bihar, Patna which is still pending for consideration. After realizing that he would not get anything from the procedural manner under the Companies Act, the present case has been filed with an intent to extort money from the petitioners by filing forged and fabricated documents.

It is further submitted that the informant claims to have invested Rs. Four lac in the company to purchase 40,000 equity shares of the Company on 18.02.2013. Thereafter, the informant went as per his own showing, went in deep slumber. The informant as per his own statements wakeup after death of founder of the Company namely Upendra Kumar Jaiswal on 27.07.2020. The informant while making such statement has stealthy withhold the fact that Upendra Kumar Jaiswal had transferred his shares in the Company on 08.05.2017 itself, after which Upendra Kumar Jaiswal had no concern with the company. The company has filed its annual return for the financial year 2017 to 2018 in which it has been specifically mentioned that the Annual General meeting was held on 27.09.2017 and 29.09.2018 the said annual returns also mentioned about the due date of AGM of the Company to be 30.09.2018. In that view of the matter, the allegation that the AGM of the company was not convened as such, it has no leg to stand.

It is further submitted that since the informant had surrendered his shares in the Company, he had no concern with the Company. The Company is not obliged to give any information relating to the Company to the informant nor the informant is legally entitled to receive any information from the Company. Since the informant has surrendered his share certificates to the company on 02.05.2017 itself, he has not produced his share certificates. If the informant claims to be share-holders of the company, he may be called upon to produce his share certificates. Shares of any shareholders cannot be transferred until the shareholders surrender their share certificates with consent. At present the present shareholders hold their share certificates issued by the company whereas 32 shareholders including the informant do not have share certificates because they have surrendered their certificates with form SH-4. Apart from this, informant has not attached any share certificate with the FIR, which falsifies the prosecution story.

Petitioners had not used any signed paper of the informant for transfer his share neither they had submitted any forged or fake document related with informant before the Registrar of Companies for transfer of share as such no offence of cheating and forgery is made out against the petitioners. Since it is not the case of the informant that he entrusted Rs.4,00,000 to the petitioners, hence, no case under Section 406 of the Indian Penal Code is made out against the petitioners. The instant case also lacks ingredients of Section 420 of the Indian Penal Code in view of the fact that the informant had already transferred his shares to the company on 08.05.2017 after which the company had filed its annual returns for the financial year 2017-18 in which no error was found by the competent authority. The complaint filed before the Company Registrar was also not considered by the Registrar of the Companies being baseless. The present case cannot by any stretch of imagination be termed as criminal liability. The informant may seek his remedy before the National Companies Law Tribunal under Sections 206, 210 and 59 of the Companies Act, 2013. No case is made out under any sections of the Indian Penal Code.

On the other hand, learned counsel for the informant as well as learned A.P.P. for the State has opposed the prayer for bail of the petitioners. They submitted that the informant was shareholder of 40,000 shares in the company which was purchased at the face value of Rs.4,00,000/-, which in course of time has increased manifold with the increase in the assets of the company. The petitioners having eyes on the assets of the company sidelined Late Upendra Kumar Jaiswal and took control over the company and indulged in all sort of forgery for their personal gain from the company. They did not give any information of the meeting of the company to the shareholders. When information regarding his shares and meeting to be held by the company was sought for by the informant, the petitioners humiliated and harassed the informant. The petitioners have neither shown nor enclosed any documents to show as to in what manner the informant had expressed his willingness to transfer the equity shares to another person. The petitioners have not disclosed as to by what mode and on which date the payment of consideration amount was made to the informant. It is further stated that on the complaint filed by the informant before the Registrar of Companies, show cause was issued in the name of the company and the petitioners. Even the legal heirs of late Upendra Kumar Jaiswal had made complaint to the Registrar of Companies. When the petitioners did not turn up before the Registrar of Companies in response to the show cause notice, the Registrar of Companies has issued another show cause notice vide letter no. 582 dated 24.06.2021 directing them to furnish their explanation failing which legal action would be taken against them under the provisions of the Companies Act.

In reply, learned counsel for the petitioners submitted that one of the Directors of the company, namely, Upendra Kumar Jaiswal had resigned from the company on 17.04.2011 itself till then the company had not started any business. The business of Cold Storage was started in the year 2013. Thus, the assertion of the informant that the earlier Director late Upendra Kumar Jaiswal had increased the asset of the company is totally false because Late Upendra Kumar Jaiwal had resigned from the company even before the start of any business. The petitioners have always followed the norms of the law and regularly conducted meeting of the shareholders and properly intimated them for the proposed meetings of the company. It is also false to state that the petitioners had not given any reply to the Registrar of Companies on the show cause notice issued to them. The petitioners have already given reply to the show cause on 01.07.2021. It is further submitted that late Upendra Kumar Jaiswal had transferred his shares on 08.05.2017. He died on 27.07.2020 and during his lifetime he never raised any complaint with regard to transfer of his share but after death of Upendra Kumar Jaiswal, the informant conspired with the heirs of late Upendra Kumar Jaiswal and instigated them to file complaint before the Registrar of Companies. The informant has alleged transfer of his shares fraudulently. However, he has not filed any complaint with respect to the fraud in any Police Station even after lapse of about four years. Learned counsel for the petitioners submitted that the prosecution case is totally false, wrong fraudulent with an ulterior motive to blackmail the company and its Directors.

Having heard learned counsel for the parties and having gone through the materials available on record, this Court is inclined to enlarge the petitioners on bail. The petitioners are directed to surrender in the Court below within a period of four weeks from today and in the event of their arrest or surrender in connection with Kotwali P.S. Case no. 179 of 2021, they will be enlarged on bail on furnishing bail bond of Rs. 10,000/- (Rupees ten thousand) with two sureties of the like amount each to the satisfaction of learned CJM, Patna subject to the conditions as laid down under section 438(2) of the Cr.P.C.

(Sunil Kumar Panwar, J)

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