

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63986 of 2021

Arising Out of PS. Case No.-861 Year-2019 Thana- RAMKRISHNANAGAR District- Patna

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MUKESH TIWARI S/o Upendra Kumar Tiwari Resident of Village -
Gorkhari, P.S. - Vikram, District - Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Gyanendra Kumar Shukla, Advocate

For the Opposite Party/s : Mr. Shailendra Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 18-07-2022 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

The petitioner apprehends his arrest in connection with Ramkrishna Nagar P.S. Case No. 861 of 2019 registered for the offences punishable under Sections 419, 420, 467, 468, 469, and 471 of the Indian Penal Code.

Learned counsel for the petitioner submits that the petitioner is a person with clean antecedent and the informant alleges that she got registry done of a house at Jaganpura for Rs. 28 lakhs on 27.09.2018 as detailed in the FIR, it is next alleged that after getting the house registered in the name of the informant, the informant got her name mutated and even got electricity connection in her name and started paying the municipal rent as well as electricity bill, it is next alleged that on



18.11.2019, the informant got an information from a learned lawyer of Patna High Court that the said house is mortgaged with the SBI as the seller had taken a loan of Rs. 25 lakhs from the bank after mortgaging the said house and presently the dues of the seller is to the tune of Rs. 38 lakhs, it was also informed by the learned lawyer that in the event if the seller fails to pay back the loan amount then the bank can auction the said house at any time. It is further alleged that when the informant called the seller on his mobile the phone was switched off, it is next alleged that when the informant asked for the copy of the original deed from the seller, he told her that he would give it to her at the time of registry but few days before the registry, the seller had informed that original deed/L.P.C. etc is lost somewhere and he has given a Sanha as detailed in the FIR, it is next alleged that the seller had also published the said fact in the newspaper also, further it is alleged that the seller had also affidavited on a stamp of Rs. 1000/- that he has not taken any loan on the house or the land and has not mortgaged it. If anything in the future comes up then he would be himself responsible, it is next alleged that the petitioner and other co-accused were involved in the conspiracy as they have signed as witnesses on the sale deed.



Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case, the dispute is completely civil in nature and as such criminal proceeding should not be resorted to and relies on a judgment of the Hon'ble Supreme Court in the case of **Dilip Singh vs. State of Madhya Pradesh** and another Criminal Appeal No. 53 of 2021 arising out of SLP no. 10484 of 2019 to submit that criminal courts should not act as a recovery agent for the informant or the complainant as the case may be when the dispute is completely civil in nature. It is next submitted that petitioner is son of the seller of the property and he has merely witnessed the sale deed as such being a witness he cannot be imputed with any motive. It is further submitted that the seller of the land is a person of feeble mind and the informant took advantage of his mental condition and thus purchased the property worth Rs. 70 lakhs in just Rs. 28 lakhs that also shows that how the informant has cheated the seller of the land.

Learned A.P.P. for the State, Shri Chandra Bhushan Prasad opposes the prayer for anticipatory bail of the petitioner and submits that the submission of the learned counsel for the petitioner on the face of it appears to be very attractive but is fit to be rejected at the outset, it is next submitted that it absolutely



does not stand to reason that father and son together cheated an innocent lady, it is further submitted that the seller of the property had mortgaged the property with the bank after obtaining loan and it cannot be presumed that this fact was not known to the son of the seller. The learned APP next submits that the argument of the learned counsel for the petitioner is dichotomic, at one stage he submits that being son of the seller he was not aware that the property was mortgaged and on the other hand it is submitted that despite property being of Rs. 70 lakhs, the informant purchased it only for 28 lakhs taking advantage of the mental condition of the seller but still the petitioner being son of the seller very conveniently signed on the sale deed, this amply demonstrates that the property was worth for what it was purchased and the petitioner in connivance with his father duped the innocent informant. The learned APP next submits that it is true that criminal cases should not be resorted to for settling civil disputes but then there are cases which though appears to be civil in nature but they have the touch of criminality and the present case is one of them.

Considering the submissions made by the learned APP for the State, the Court is not inclined to extend the



privilege of anticipatory bail the petitioner.

His prayer for anticipatory bail is thus rejected.

(Satyavrat Verma, J)

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