

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.79350 of 2019

Arising Out of PS. Case No.-708 Year-2019 Thana- KOTWALI District- Patna

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KRISHNAJEE PRASAD @ KRISHNA YADAV Son of Late Kamal Prasad
Resident of Village - B.C. Dey, Campus, Sinha Library Road, Plot No.13,
P.S.- Kotwali, Patna, Distt.- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Sheo Jee Mishra
For the Opposite Party/s	:	Mr.Madhura Nand Jha
For informant	:	Mr. Awadhesh Kumar Mishra

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

7 07-02-2022 Heard Mr. Sheo Jee Mishra, the learned counsel

for the petitioner and Mr. Awadhesh Kumar Mishra, the

learned counsel for the informant. The State is

represented by Mr. Madhura Nand Jha, the learned APP.

The petitioner seeks bail in anticipation of his

arrest in connection with Kotwali P.S. Case No. 708 of

2019 instituted for the offences under Sections 451, 384,

386, 506 and 340 of the Indian Penal Code.

By order dated 06.12.2021, this Court noted the

fact that the accusation in the First Information Report is

that the informant had taken birth in the house in which



the petitioner has unauthorizedly been residing.

The aforesaid property is the self acquired property of the maternal uncle of the informant. After the death of his maternal uncle, the informant started residing in the same house along with her cousin, namely, Sugata Dey, who also died, leaving behind only the informant to look after the property. On one occasion when she had gone out of town to visit her daughter at Pune, the lock of the house was broken open and three of the accused persons, namely, Krishna Yadav, Lallan and Gagan forcibly entered her house and opened the garage. In the undemised portion of the house, one Md. Safiur Rahman was also brought in and he has kept his tent-shop items for grabbing the property.

The learned counsel for the petitioner has submitted that the property does not belong to the informant. It is a *Khas Mahal* property which was under the possession of one late Devesh Chandra Dey, who actually had brought in the petitioner in the house and the petitioner had been rendering financial and physical help to



aforesaid Devesh Chandra Dey in his old age. In fact, when aforesaid Devesh Chandra Dey died, the petitioner and others who were residing in the house with the consent of late Mr. Dey had performed the last rites. The informant, it has been urged on behalf of the petitioner, has now appeared from nowhere only to claim possession of the house in question which is in a posh locality of the town. It has also been submitted that the petitioner had made a representation before the Senior Superintendent of Police and communicated to him that the claim of the informant over the house in question is absolutely false and bogus and that he has been made accused in this case without any reason, even though he is in service of Bihar Legislative Council.

It appears from the order dated 06.12.2021 that the Court came to the conclusion that if the house in question has not been sold to the petitioner or has been given on rent to him, his bonafides would only be reflected if he vacates the premises of the house.

According to the own showing, there was no



owner of the house alive for him to make payment of rent. What is the rental amount is also not known; neither has it been disclosed in the bail petition.

On this observation of this Court, it appears that the counsel who had been appearing in this case earlier, namely, Mr. Sarvdeo Singh agreed and assured this Court that by the next date, the petitioner would vacate the premises.

Based on this presumption that if the petitioner vacates the premises for which there is neither any rent agreement with him nor has he purchased the property, his bonafides could be established at least *prima facie* that he is not a forcible entrant in the house, the Court granted interim reprieve to him.

Today, Mr. Sheo Jee Mishra, learned Advocate has submitted that the petitioner had not consented for vacating the premises and Mr. Sarvdeo Singh, learned Advocate had agreed and consented for the same without any instructions from the petitioner.

The learned counsel for the petitioner reiterates



that the property does not belong to the informant and the petitioner and several others had been residing in the said house as they had been brought in as tenants by the late owner of the house, namely, Mr. Dey about whom reference has been made in the earlier part of the order.

By way of an affidavit, the learned counsel for the petitioner has brought on record his reply to the show-cause notice issued to him by the District Magistrate, Patna in which he has stated that after the death of Bankim Chandra Dey, his son Devesh Chandra Dey came in possession of the property, who had inducted the petitioner as a tenant in the house.

A deed of agreement for sale of lease-hold right has also been brought on record.

However, the learned counsel for the petitioner has fairly conceded that whether any permission was taken by the ex-lease holder for selling his interest in the property to the petitioner and another or not is not yet certain but the petitioner along with another tenant, who is a Police Officer has paid Rs. 4.5 lakhs to late Mr. Dey.



Nothing has been brought on record as an evidence in aid of the afore-noted statement.

Mr. Awadhesh Kumar Mishra, the learned counsel for the informant, however, submits that assuming every statement of the petitioner to be correct, the petitioner is only an unauthorized occupier of the house and even if the issue with respect to the ownership of the property in question, is under dispute, it would be a civil dispute vis-a-vis the informant who is claiming her ownership over the land on the basis of inheritance and somebody else of the family who may turn up and seek the ownership. So far as the petitioner is concerned, there is no dispute with him as he is neither a tenant nor has he purchased any part of the property. He is just an unauthorized entrant in the house in question.

In that view of the matter, this Court was of the view that if the petitioner vacated the property straightaway because he is not able to locate the owner, his bonafides could have been established. Not doing so, this Court finds, is only a blatant attempt on the part of



the petitioner to stay in the house in which he is neither a tenant nor is there any evidence of his having been allowed to remain as a tenant. The fact that his son had taken birth in the house and the other documents which have been brought on record to indicate that the petitioner is not an unauthorized occupant of the house would be of no avail so far as the petitioner is concerned.

The petitioner cannot take advantage of the entire case hinging on a civil dispute between the persons who might stake claim over the property in question.

For the aforesaid reasons and the fact that the petitioner has not shown his bonafide by vacating the premises, I am not inclined to grant anticipatory bail to him.

The prayer for anticipatory bail is rejected.

The interim order passed in favour of the petitioner stands vacated.

Should the petitioner surrender before the court below and seek bail, his application shall be considered on its own merits, taking into account the grounds which have



been raised by the petitioner in the present petition as also that two of the other accused persons have been granted regular bail and an order shall be passed without being prejudiced by the fact that the present petition on his behalf has not been entertained.

(Ashutosh Kumar, J)

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