IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36523 of 2022

Arising Out of PS. Case No.-380 Year-2016 Thana- KOTWALI District- Patna

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Rajiv Ranjan Singh @ Raju Singh Son Of Late Ram Chandra Singh Resident Of Village- Wajidpur, P.S.- Bihta, District- Patna, A/P Residing At Flat No-401, Pushpa Mention Apartment, Viveka Nand Park Road No.- 13a, P.O. And P.S.- Patliputra, District/Town- Patna

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Birendra Sharma
For the Opposite Party/s : Mr. Mithlesh Kumar Khare

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CORAM: HONOURABLE MR. JUSTICE SUNIL KUMAR PANWAR

ORAL ORDER

5 01-02-2023 Heard learned counsel for the petitioner and learned APP for the State.

The instant application for regular bail has been filed by the petitioner in connection with Kotwali P.S. Case no. 380 of 2016 instituted for the offence punishable under Sections 406, 420, 467, 468 and 120 of the Indian Penal Code.

The prosecution story, in brief, is that the informant Rakesh Prasad Singh is the Managing Director of ‘Aparna Housing & Construction Pvt. Ltd. and he came in contact with co-accused Vishal Kumar Mishra and this petitioner, who assured the informant to provide a piece of land situated in front of Laxmi Complex, Boring Road, Patna. The petitioner and co-accused Vishal Kumar Mishra told the informant that they had already got executed a deed of ‘Agreement for Sale’ in their favour from the owner of the land. It is further stated that the petitioner and other co-accused Vishal Kumar Mishra told that they were Directors of ‘A.V.R. Green Homes Pvt. Ltd. and gave a copy of ‘certificate of incorporation’ of the said company. They demanded Rs. 4 Crores for the said piece of land for paying it in advance to the owner of the land. The accused further assured to execute a sale deed in favour of the informant, whereupon the informant paid Rs. 3,88,85,000/- to them through RTGS and in cash also. The accused did not execute any sale deed in the name of the company of the informant. It is also stated that on verification of the documents produced by the accused, the same was found to be forged. The informant asked the accused to refund the amount received by them but they did not refund the same.

It is submitted by learned counsel for the petitioner that petitioner has been falsely implicated in the present case only as formality being one of the Director of M/S AVR Green Homes Pvt. Ltd. to which payment of Rs. 3,88,85,000 was made through RTGS. No any money transaction was made directly to the petitioner. It is evident that the dispute is purely of civil natutre and the informant has also filed a Money Suit No. 01 of

2018 for recovery of the alleged amount against the petitioner and others, which is pending in the Court below. The alleged occurrence took place in the year 2012 but the FIR has been lodged after an inordinate delay of four years without any plausible explanation. It is further submitted that a company can not be treated as Partnership firm and one director of a company cannot be made liable for the act of another director of the company, especially when the company in question has not been made accused either by the informant or by the Court below. Petitioner is one of the directors of the alleged company and no criminal liability is made out against him. It is further submitted that the documents of the land, which was proposed to be sold to the informant, were handed over to the informant by the petitioner and other co-accused persons. There is no direct allegation against the petitioner and no offence is made out against him. Petitioner is languishing in judicial custody since 20.08.2021.

Learned APP appearing for the State and learned counsel for the informant have opposed the prayer of bail and submitted that petitioner is a habitual offender as against him, there are 20 cases almost of like nature, pending against him. He is named in the FIR. It is mentioned in para 11 of the case diary that an amount of Rs. 3,88,85,000/- was paid by the informant's Company to the Company of the petitioner through RTGS as well as cash, in which he was Director. Paragraph 38 of the case diary indicates that the petitioner and two other co-accused persons have withdrawal the money from the account of the Company through cheques by putting their signatures, which was deposited by the informant's Company. Informant has paid the said money on assurance given by the petitioner and other accused persons that they had acquired the said piece of land situated at Boring Road, Patna in front of Laxmi Complex and he besides two other Directors would execute sale deed in favour of the Company of the informant and then only the informant had transferred the aforesaid amount in the alleged Company. Paragraph 58 of the case diary, indicates that out of total deposited amount, Rs. 2,08,53,709/- has been withdrawn by Vishal Kr. Mishra (co-accused), Rs. 61,47,800/- withdrawn by co-accused Ajay Kr. Singh and Rs. 66,00,000/- withdrawn by the present petitioner and now the said account has zero (0) Balance. Whatever documents were produced by the petitioner and other co-accused persons for the purpose of sale of land in favour of the informant's Company were also found to be forged and fabricated. It is further submitted by learned counsel for the informant that petitioner had been absconding since 18.10.2017 till 20.08.2021 i.e. approximately about four years. Out of three accused persons, one of the co-accused has already been convicted by the learned trial court.

Subsequently, neither the petitioner and two other accused, who are Directors of the Company had executed the sale deed nor did they return the amount of Rs. 3,88,85,000/- received from the informant towards an advance for executing the the sale deed. Such act has been done by the petitioner and others for getting a wrongful gain and due to this a huge financial loss has been caused to the informant.

From the record, it appears that earlier the petitioner had moved before this Court for grant of regular bail vide Cri. Misc. No. 50253 of 2016, in which on the basis of joint prayer made on behalf of the parties, the matter was referred to the Patna High Court Mediation Center for settlement by mediation and then this Court vide order dt. 21.11.2016 released the petitioner on provisional bail. The Mediator submitted his report dt. 20.6.2017, wherein it was reported that mediation failed even after the best efforts made by the Mediator on several dates. This Court had then proceeded to hear the regular bail of the petitioner on merit. Further the provisional bail granted to the petitioner was cancelled and he was directed to surrender before the court below within a period of eight weeks. Moreover, it was also made clear that if the petitioner fails to do so, the learned court below will be at liberty to take all necessary steps under the law for appearance of the petitioner in this case.

However, the petitioner did not surrender before the learned court below and moved before the Hon'ble Supreme Court vide Special Leave to Appeal (Crim) No. 9622/2017, challenging the order dated 18.10.2017, by which his regular bail application was rejected by this Court. However, the said Special Leave to Appeal (Crl) No. 9622 of 2017 was dismissed as withdrawn vide order dated 14.12.2017.

Petitioner had also filed an application before this Court challenging the order dated 17.10.2016 passed by learned Chief Judicial Magistrate, Patna, in which court below has taken cognizance under Sections 406, 420, 467, 468, 120-B and 34 of the Indian Penal Code. The said application was dismissed on 29.01.2021. However, liberty was granted to the petitioner to approach the court below, if so advised, and prefer an application for discharge.

In the background of the aforesaid facts, a status report was called for from the learned trial court regarding the present stage of the case.

It appears from the report of the learned trial court dt. 24.12.2021 that discharge petition filed by the petitioner is pending for adjudication and, hence, charge has not yet been framed against the petitioner. Further, it has been reported that the trial is likely to be concluded within a period of six months.

Petitioner moved before this Court vide Cri. Misc. No. 63825 of 2021 for grant of regular bail, which was also dismissed on 15.04.2022 with a direction to learned trial court to expedite the trial and conclude the same preferably with a period of six months.

Having heard learned counsel for the parties and taking into consideration that the petitioner is directly involved in the act of forgery of huge amount in the name of executing sale deed of a piece of land in favour of the informant on the basis of forged documents, I am not inclined to grant bail to the petitioner and, as such, his application for bail is rejected.

The trial court is directed to expedite and conclude the trial within a period of six months.

(Sunil Kumar Panwar, J)

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