

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38120 of 2023

Arising Out of PS. Case No.-362 Year-2022 Thana- KALYANPUR District- Samastipur

Niraj Kumar @ Niraj Sahni Son Of Ranjit Sahni R/O Vill Khaidi Namapur Ps
Chakmehsi, District- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bijay Bhushan Prasad, Advocate

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

CORAM: HONOURABLE MR. JUSTICE VIPUL M. PANCHOLI
ORAL ORDER

- 2 04-08-2023 1. This application is filed under Section 438 of the Code of Criminal Procedure, 1973, wherein, the applicant has prayed that he may be enlarged on bail in the event of his arrest in connection with Kalyanpur P.S. Case No. 362 of 2022 for the alleged offences punishable under Section 392 of the I.P.C.
2. Heard Mr. Bijay Bhushan Prasad, learned advocate for the applicant and Mr. Ashok Kumar Singh, learned APP for respondent-State.
3. Learned advocate for the applicant has referred the allegations made in the F.I.R. and submitted that F.I.R. is filed against three unknown persons during the course of the investigation. One of the co-accused has been arrested and the confessional statement given by the co-accused, the applicant



has been falsely implicated in the F.I.R. in question. It is further submitted that the applicant is a fish merchant and ₹ 24,000/- was found from his premises when search was carried out at the place of the applicant. It is submitted that the said amount is not a big amount which can be found from the place of any person. It is further submitted that the Pulsar Motorcycle was recovered from outside the house of the present applicant and merely because the said bike is recovered, the applicant cannot be presumed to have committed the alleged offence.

4. Learned counsel, therefore, urged that this application be allowed. It is also submitted that there is no antecedent reported against the applicant. It is fairly submitted that no other F.I.R. is registered against him. The same is not filed under Section 392 of the I.P.C. On the other hand, learned APP that though the applicant is implicated on the basis of the statement of the co-accused, the same can be considered as a clue for further investigation and in the cases like the present one, custodial interrogation is required. It is also submitted that as observed by the concerned Sessions Court while rejecting the applications filed by the present applicant, it has been specifically observed that ₹ 24,000/- has been recovered from the premises of the applicant. Similarly, Pulsar Motorcycle



which is referred in the F.I.R. is also recovered from the place of the applicant. Learned APP, therefore, urged that there is a *prima facie* case made out against the applicant and, therefore, the present application may not be entertained.

5. Having heard the learned advocates appearing for the parties and having gone through the materials placed on record, it would emerge that though the applicant is not named in the F.I.R. during the course of the investigation, Priyam Kumar @ Chaman has been arrested by the investigating agency and during interrogation, the said co-accused has given the name of the present applicant. Thereafter, the investigating agency has carried out the investigation and the bike which is referred in the F.I.R. has been recovered from the premises of the applicant. Similarly, ₹ 24,000/- is also recovered from his premises.

6. Thus, *prima facie* it is clear that on the basis of the confessional statement given by the co-accused, certain material is found from the premises of the applicant. Thus, prosecution has made out against the applicant and I am of the view that in the present case, custodial interrogation of the applicant is required.

7. Looking to the facts and circumstances of the



present case, I am not inclined to exercise discretion in favour of the applicant.

8. This application is, therefore, dismissed.

(Vipul M. Pancholi, J)

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