IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40240 of 2023

Arising Out of PS. Case No.-149 Year-2022 Thana- RAMPUR District- Gaya

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NAUSHAD KHAN SON OF NAZBUL HODA KHAN RESIDENT OF VILLAGE - ISMAILPUR, PS- GARUA, DISTT- GAYA, PESENT ADDRESS IMAMGANJ MORE, HAMZAPUR, PS- AMAS, DISTT- GAYA

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr.Kumar Ravish Mr. Dheeraj Kumar Roy
For the State	:	Mr.Ram Anurag Singh, APP
For the Informant	:	Mr. Rana Vikram Singh Mr. Dayanand Singh Mr. Dhananjay Kashyap

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CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR
C.A.V. ORDER

6 01-12-2023 Heard learned counsel for the parties.

2. The present application has been filed for grant of bail in connection with Rampur P.S. Case No. 149 of 2022 registered for the offences punishable under Sections 406/420/467/468/471/120-B of the Indian Penal Code. The petitioner is in custody since 21.03.2023 in connection with the present case.

3. The prosecution case in short as per the informant Rajnish Kant, Zonal Legal Head of the Tata Motors Finance Limited with prime allegations that upon request of this petitioner for granting financial assistance for purchase of trucks from the informant's company which is a non-banking finance company engaged in the business of finance and balance

transfer facility was availed by the petitioner with respect to Tata Truck Registration No. NL 01 N 3100 and the loan/ hypothecation agreement was executed on 19.02.2020 and installment was fixed, however, there was default in payment of installment and in the meanwhile the petitioner transferred the vehicle to one Pintu Chaudhary on 25.4.2021 at Rs. Five Lakhs and therefore, he committed the crime.

4. Learned Senior Counsel appearing on behalf of the petitioner has submitted that the informant got the copy of the FIR of Sherghati P.S. Case No. 21 of 2021 lodged by this petitioner showing that he sold the truck to one Shankar Yadav which was financed by Tata Motors Finance Limited.

5. It is argued that the petitioner had availed the loan from Tata Motors Finance Limited way back in the year 2017 and paid the installments to the satisfaction of the Company.

6. He has further submitted that in an around the year 2020 the Tata Motors Finance Limited shifted the loan to Tata Motors Financial Solutions Limited (for short TMFSL) practically with no information or notice to the petitioner and one day the petitioner was asked to sign papers of balance transfer to TMFSL, however, later the petitioner could come to know that the deposits made by him with the original financier

were not credited in the TMSFL and that led to objection and dispute from the side of the petitioner.

7. It is next submitted that the authorities of the Tata Motors on 27.12.2021 forcefully took possession of one of the vehicles of this petitioner bearing registration No. NL 01 N 3100 at Chatra (Jharkhand) which led to serious dispute between the petitioner and the financier. Upon much follow up ultimately on 12.01.2022 after illegally keeping the vehicle, the same was released by the financier. Even, later the petitioner filed a criminal complaint also. On 31.7.2017 the petitioner and Tata Motor Finance after due satisfaction and based on outstanding CIBIL score of the petitioner granted vehicle loans for thirty vehicles.

8. Learned Senior Counsel for the petitioner has submitted that the petitioner had good track record and even time to time the no objection and no dues certificate have been issued by Tata Motors.

9. He has argued that the illegal recovery of possession of the vehicle disturbed the smooth business of transportation of the petitioner as also COVID 19 and lockdown harmed the business a lot. Even recently this Court has deprecated the practice of financiers in the State of Bihar in forcefully taking

possession of vehicles and the financiers were imposed heavy cost by this Court which shows the attitude of the financiers in harassing the borrowers. However, the petitioner save and except the Covid period maintained good relationship with the financier and made timely payment of the installments. On 14.02.2022, the financier again repossessed one of the petitioner's vehicles at Varanasi which was released later on upon protest of the petitioner.

10. He has submitted there is no dispute with regard to the fact that the petitioner made payment of installment of the vehicles smoothly from 2017 till 2021.

11. It is submitted that the petitioner had moved before this Court by filing a request case under Request Case No. 79 of 2022 for appointment of an arbitrator however after much contest and protest from the side of the Tata Motors (financier), the said request case was rejected on technical ground that the jurisdiction to appoint the arbitrator vests with the Bombay High Court. The judgment was passed on 26.04.2023, however, prior to that the informant managed the arrest of this petitioner in connivance with the local Police.

12. He has argued that, in fact, invoking the arbitration clause and the provisions of the Arbitration and Conciliation

Act, 1996, the financier company has already approached the Bombay High Court under Section 9 of the Arbitration and Conciliation Act, 1996 by filing an interim application under Arbitration Petition No. 8654 of 2022 however they have not been able to obtain any interim directions in their favour so far and therefore as and by way of their frustration, this petitioner was implicated in a false criminal case and taken into judicial custody upon pressure and by managing the local police.

13. Learned Senior Counsel has submitted that, in fact, the financier had also filed an application seeking appointment of arbitrator before the Bombay High Court. The same has been filed on 9.2.2023 under CNR No. HCBM020039092023 with e-filing no. ECHCBM02014882023 and Lodging No. CARAPL/3908/2023 titled Tata Motor Finance Solution Limited Vs. Naushad Khan in response to the application seeking appointment of arbitrator filed by this petitioner before this Court. Thus a dispute of pure civil nature was given a color of criminal case and this petitioner was arrested at the whims of the informant in collusion with the local Police on 21.03.2023.

14. It is argued that in any case, the investigation of the case in so far as the present petitioner is concerned is complete and he has already been chargesheeted despite there being no

material against him vide Chargesheet No. 222 of 2023 on 14th of May 2023 under Sections 406/420/467/468/ 471/120-B of the Indian Penal Code.

15. It is submitted that the informant represents the creditor and the creditor through its Branch Manager at Gaya, Bihar executed the loan cum hypothecation cum guarantee agreement on behalf of the Tata Motors Finance Solutions Limited/Tata Motors Finance Limited on 7.2.2020. He further submits that under Clause 21 of the agreement, there is an arbitration clause covering all disputes, difference and/or claims arising out of the agreement.

16. Learned Senior counsel further has submitted that earlier the financier unilaterally invoked the arbitration clause and appointed one Shri Lalit V. Jain, Advocate as the sole Arbitrator however upon objection by the petitioner that his appointment is *per se* illegal ultimately on 23.02.2022 the Sole Arbitrator refused to grant consent to act as an Arbitrator. On 20.06.2022, the petitioner invoked the arbitration clause under Clause 21 of the agreement and sought for appointment of an arbitrator, however, despite passage of thirty days, the respondent has neither consented to the appointment of arbitrator nor responded to the notice despite clear service of the

notice upon him.

17. He has submitted that it is also a fact that after repeated reminders and demand, the petitioner was provided with the copies of the agreements said to have been executed by the petitioner only with the Tata Motors Financial Solutions Limited in the year 2020. The same were provided to the petitioner on 24.02.2022. However, the agreements executed with the Tata Motors Finance in the year 2017 were never provided to the petitioner despite demand.

18. It is further submitted that in the petitioner's understanding, there is no serious liability or outstanding as the petitioner had paid the installments and settled the matter with the branch and there was issue only with respect to interest between the parties due to COVID 19 lockdown and restrictions and the petitioner was requesting the authorities to act as per the government guidelines and grant certain indulgence.

19. He has submitted that Tata Motors Finance Ltd levied high rate of penal interest and other charges and thereby, illegally created huge debt over the petitioner and the local management of Tata Motors Finance Ltd. started creating pressure upon the petitioner for settlement of loan account (despite of the fact that the maturity date of the said loan of

2017 was 02.07.2022) by saying that the top Management of Tata Motors Finance Ltd. does not want to continue the loan related to 14 wheeler Vehicle, thereby, the local officials of Tata Motors Finance Ltd created undue pressure upon the petitioner for payment of entire dues or to surrender the vehicle and the Respondent is maintaining its view to take possession of the vehicle without proper adjudication of the matter and hence, they filed an application under Section 9 of the Act before the Bombay High Court which was not even maintainable and that too when the company could not succeed in appointment of Arbitrator as per their choice.

20. Learned Senior Counsel further has submitted that as per the FIR, the informant claimed that the petitioner sold the vehicle to co-accused and in this regard, it is stated that even the agreement executed by this petitioner categorically mentions that the installment towards the vehicle no. NL01N3100 is to be paid. In fact, on account of non-payment of installments, this petitioner even lodged a criminal case. In fact, with respect to BR02GA 6073, there is no agreement with any person and thus the contention of the company is opposed. It is stated that in any transaction the financing company was safe as installment was duly protected whenever drivers were given the vehicle by the

petitioner.

21. Learned Senior Counsel for the petitioner has submitted that the petitioner has not sold any vehicle under the loan agreement.

22. He has argued that, in fact, there is error of record in the last paragraph of the impugned order rejecting the regular bail petition on 20th May 2023 wherein the Additional Sessions Judge 10th, Gaya has noted that the petitioner has filed a petition at the time of hearing that he is ready to pay Rs. 2,50,00,000 and remaining Rs. 2,20,00,000/- will be paid in 10 installments of Rs. 22,00,000/- each whereas what was prayed for and presented while pressing the regular bail petition from the side of the petitioner was that he is ready to give Rs. 2,50,00,000 as a onetime settlement in view of the fact that in the month of August and October, 2022 the petitioner had a meeting with Mr. Amit Srivastava of Tata Motor Finance at Patna regarding one time settlement of all the 29 vehicles in which he told that the petitioner must pay a sum of Rs. 2,50,00,000 towards full and final settlement whereas at the relevant time the petitioner was only willing to pay Rs. 2,00,00,000 in view of his financial condition and impact of COVID-19 lockdown on the business, as a onetime settlement and thereafter the negotiation continued

and the matter was delayed and it was in that background, at the time of hearing of the bail petition, the petitioner made an offer that he would pay a sum of Rs. 2,50,00,000 as originally demanded under one time settlement by Mr. Amit Srivastava of Tata Motors Finance Limited and immediately he would be paying a sum of Rs. 30,00,000 to the company and rest amount that is Rs. 2,20,00,000 will be paid in 10 monthly installments of Rs. 22,00,000 each and therefore the total offered amount from the side of the petitioner was only Rs. 2,50,00,000 which has been inadvertently incorporated in the order.

23. Learned Senior Counsel for the petitioner has submitted that the chargesheet has already been filed by the police and the investigation is complete and thus there is no chance of this petitioner tampering with evidence or causing impediment in the investigation.

24. At the outset, learned counsel appearing on behalf of the Tata Motors Financial Solution Limited has submitted that the petitioner do not deserve bail in the given factual circumstances where the petitioner has acted with meticulous planning to defraud the Informant company resultantly causing the wrongful loss to a tune of approximately Six Crores by purchasing the vehicle on loan facility from the Informant

Company, stopping the repayment of the said loan and thereafter selling the same to a third party without any prior consent or information of Informant Company.

25. It is also submitted that the deceitful and fraudulent intention of the petitioner is exposed from the plain reading of the bail application filed by the petitioner wherein the petitioner has made an attempt to simplify the entire offence to present it as a contractual / civil dispute by deliberate concealment and giving misleading statement before this Court.

26. He has submitted that the petitioner has made an attempt to present the offence in the nature of a contractual / civil dispute simpliciter whereas the correct fact is that the petitioner has committed the offence of cheating and fraud whereby he sold the vehicles purchased on loan facility extended by the Informant Company and the petitioner has deliberately not disclosed the location of the said vehicles, either to the police during the investigation of instant Rampur P.S. Case No. 149/2022 or the Bombay High Court despite specific direction being passed vide order dated 07.06.2022 in Commercial Arbitration Petition (L) No. 8654/2022.

27. Learned counsel for the Finance Company has further submitted that this fact alone exposes the deceitful nature of the

petitioner whereby on one hand he has sold the vehicles to the third persons and on the other hand deliberately not disclosed the locations/ details of such vehicles and further presented the offence as a civil dispute before this Court.

28. It is submitted that the Informant seeks to bring the correct factual matrix before the Hon'ble Court to show the deceitful and fraudulent *modus operendi* of the petitioner by which the petitioner has cause huge wrongful loss to the Informant Company.

29. Learned counsel has argued that the petitioner is engaged in the business of transportation and he approached the Informant Company seeking the financial assistance for purchase of vehicles. On the basis of request so made by the petitioner, the Informant Company extended loans for purchase of a fleet of total 29 vehicles.

30. He has argued that on 26.12.2019, the petitioner/ borrower requested for restructuring of the loans borrowed by him by filling a loan application form which was accepted by the Informant Company and the loan was restructured only upon the receipt of consent whereby a fresh agreement was executed with respect to the restructured loan. The "BT Special" mentioned on the top of the application form reflects that the

outstanding balance was restructured by the way of request made therein the application.

31. It is submitted that the said loan agreement was executed with the petitioner after his consent believing that the petitioner would keep the trust by making on time payment of the installments but the petitioner failed to do so. The petitioner deliberately ignored and avoided to discharge his liability against the loan sanctioned and even despite several follow up the petitioner did not reveal the location of the vehicle and did not bring the vehicle for inspection.

32. He has submitted that the petitioner failed to adhere to the repayment of the loan and as such an amount to the tune of Rs. 6,64,88,298 (Rupees Six Crore Sixty-Four Lacs Eighty Eight Thousand Two Ninety Eight) is outstanding as on 21.06.2023 towards the entire loan extended by the Informant Company. Thereafter, the Informant company learnt that the Complainant has deceitfully and fraudulently sold the vehicle bearing registration No. NL01N3100 has been sold by the Complainant to one Pintu Choudhary vide agreement dated 25.04.2021 (Enclosed with the FIR) and also the Informant Company learnt that Complainant has sold another vehicle bearing registration no. R02GA6073 to one Shankar Yadav and

an FIR with regard to the same has been registered by the petitioner himself vide Sherghati P.S. Case No. 21/2021.

33. It is next submitted that the vehicles were purchased on the basis of loan borrowed from the Informant Company and the vehicles remained hypothecated in favour of the Informant Company and by selling the vehicles the petitioner has not only acted in complete contravention / breach of contractual terms but also acted fraudulently whereby after purchasing the vehicle on loan from the Informant Company he used the vehicle for commercial purposes in this business of transportation and thereafter sometime stopped payment of installments and sold the vehicle to an unknown third party thus causing wrongful loss to the Informant Company as on one hand petitioner did not repay the loan and on the other hand sold the vehicle to third party which belonged to the Informant Company by the way of hypothecation therefore impeding the right of repossession and recovery.

34. He has submitted that in addition to the loan borrowed for the purchase of vehicle, in few agreements, the petitioner also obtained a loan for making the body as primarily in the cases of trucks, the chassis is purchased and thereafter the owner gets the body made as per their requirements.

35. Learned counsel for the petitioner has further submitted that the petitioner repaid few installments of the loans borrowed by them and thereafter sometime stopped payment of monthly installments. Thereafter the Informant Company took recourse to the modes of recovery by legal means to ensure the repayment of loans.

36. It is also submitted that the aforesaid act of alienating the vehicle in favour of third party created great impediment in the process of recovery by the financier company as the Informant Company was not able to repossess the vehicle from the possession of any third party other than the Petitioner - Borrower.

37. Learned counsel has argued that in such a manner, the petitioner purchased multiple vehicles on loan from the Informant Company and enjoyed it for sometime and thereafter sold it to some unknown third party without prior consent or information to the third party and collected money from the third-party purchasers.

38. It is further submitted on behalf of the that it is germane to point out that in this whole process, the petitioner enjoyed the vehicle without making the payment for same and earned money out of it by plying the vehicle and thereafter

selling the same, but the Informant Company became helpless as neither the repayment is made by the petitioner nor the primary hypothecated asset, i.e.. hypothecated vehicle can be repossessed by the Informant Company as the vehicle has been transferred to some unknown third party.

39. He has further submitted that in such circumstances the Informant Company which was already incurring losses due to deliberate non-payment of the loan by the petitioner, had no option but to incur heavy losses owing to the fraudulent act of the petitioner.

40. It is also submitted by the learned counsel appearing on behalf of the Finance Company that the factual profile shows the criminal conspiracy hatched by the petitioner whereby petitioner on one hand enjoyed the vehicle purchased from loan facility of Informant Company and also the earned money by selling it to third-party purchasers and on the other hand the Informant Company was arm twisted to settle the loan with third-party purchasers after suffering huge loses to a tune of Rs. 6,64,88,298 (Rupees Six Crore Sixty-Four Lacs Eighty Eight Thousand Two Ninety Eight).

41. He has submitted that it is settled position of the law that till the entire repayment is made, the financier remains the

owner of the vehicle hypothecated and from the aforementioned factual details, the deceitful, fraudulent, dishonest and clever conspiracy of petitioner is exposed wherein the petitioner under the guise of contractual disputes has deliberately sold the vehicles which were owned by financier to have wrongful gain to himself and wrongful loss to the Informant Company.

42. Learned counsel has next submitted that in furtherance of the conspiracy, the petitioner has presented a false and misleading case before this Court to paint a picture of civil dispute arising out of non-payment of loan amount, which if seen in entirety, in actuality is a meticulously planned conspiracy whereby the petitioner had the dishonest intention since the inception of the agreement / transaction and have defrauded the Informant Company as per the pre-planned just to present it as a contractual dispute.

43. Learned Additional Public Prosecutor appearing for the State has also opposed the prayer of the bail and he has submitted that the petitioner seems to have obtained such loan of Rs. Rs. 6,64,88,298 (Rupees Six Crore Sixty-Four Lacs Eighty Eight Thousand Two Ninety Eight) amount and has conspired with other accused persons and has sold the vehicles which belong to the Tata Company and has not disclosed the

location of the vehicle, therefore, he does not deserve the privilege of bail.

44. I have considered the submissions of the parties.

45. It is an admitted position that the petitioner took loan for 29 vehicles of Rs. 5,04,58,959/- (in total) for which the petitioner was supposed to pay an amount of Rs. 7,81,10,600/- out of which an amount of Rs. 6,64,88,298/- is outstanding as on 21.06.2023 which is public money and he has sold all the vehicles to third parties. The petitioner has not disclosed to the Company, to the Investigation Officer the location of the vehicles financed by the Tata Company. He has not mentioned the location of the vehicle either before this Court or in the Bombay High Court.

46. It appears that the petitioner has taken the loan with a clear intention not to repay the loan amount. Offences as alleged have been made out and chargesheet has already been submitted.

47. In view of the aforementioned, I am not inclined to grant bail to this petitioner. It is, accordingly, dismissed.

48. The Trial Court is directed to conclude the trial at the earliest preferably within six months without granting unnecessary adjournment either to the prosecution or to the

defence side in course of the trial.

(Sandeep Kumar, J)

Saif/-

AFR/NAFR	NAFR
CAV DATE	01.12.2023
Uploading Date	02.12.2023
Transmission Date	02.12.2023