

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.43374 of 2023

Arising Out of PS. Case No.-378 Year-2020 Thana- ROHTAS COMPLAINT CASE District-
Rohtas

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Kripanarayan Singh Son Of Suresh Singh Kushwaha Resident of Village-
Mirzapur P.S.- Dawath Dist- Rohtas at Sasaram

... .. Petitioner

Versus

1. The State of Bihar
2. Bansi Singh son of Late Sona Singh Resident of Village- Chanwath P.O.-
Chanwath P.S.- Nawanagar Dist- Buxar

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Raghunandan Kumar Singh, Advocate
For the Opposite Party/s	:	Mr. Akhileshwar Dayal, APP
For the Complainant	:	Mr. Babu Nandan Prasad, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 04-08-2023 Heard learned counsel for the petitioner, learned
counsel for the complainant and learned APP for the State.

2. The petitioner in the present case is seeking pre-arrest bail in connection with Complaint Case No. 378 of 2020 registered for the offences punishable under Sections 420, 406, of the Indian Penal Code and Section 138 of Negotiable Instrument Act. He has got no criminal antecedent.

3. Learned Senior Counsel for the petitioner submits that as per allegations, the petitioner agreed to sell a piece of land for a consideration amount of Rs.38.50 Lakhs to the complainant. It is alleged that the complainant handed over the total consideration amount to the petitioner in front of the



witnesses but when the complainant asked the petitioner to execute the registered sale deed, the petitioner kept on postponing the matter on one pretext or another.

4. It is alleged that on 16.02.2020, the petitioner agreed to execute the sale deed and his father Suresh Singh also agreed and both of them executed an agreement. The petitioner also sworn an affidavit to that effect. It is alleged that this petitioner issued cheques for Rs.8,00,000/-, Rs.9,00,000/-, Rs.9,00,000/-, Rs.9,00,000/-, respectively drawn on State Bank of India, Bikramganj with an understanding that if the sale deed is not executed then the cheques may be deposited but when all the cheques were deposited in the Bank of the complainant, they stood dishonored for want of sufficient fund in his account.

5. Learned Senior Counsel for the petitioner submits that from the allegations made in the FIR itself, it would appear that it is a case of civil dispute at best and the complainant, if so advised, would have filed a suit for specific performance but in no way a criminal case would be maintainable. It is further pointed out that the four cheques were not issued in favour of the complainant but that was in lieu of another transaction which may be noticed from the agreement as contained in Annexure '2' to the present writ application.



6. On the other hand, learned counsel for the complainant has opposed this application. It is submitted that it is an admitted position which would be evident from the copy of the affidavit and the agreement placed before this Court that this petitioner has received Rs.38.50 Lakhs on the pretext of selling a piece of land to the complainant. He did not execute the sale deed and also despite promises made to the complainant, did not return the said amount. Thus, there are materials on the record to show that the petitioner had a criminal intent and intention to cheat the complainant right from the beginning.

7. It is further submitted that so far as four cheques are concerned, those were initially issued by the one of the guarantor in lieu of the transaction between Parasnath Singh and the complainant but later on, those cheques were given to the complainant in lieu of the amount received by the petitioner which was put to encashment but stood dishonored for want of sufficient fund.

8. Learned counsel submits that in an appropriate case, both civil as well as criminal proceeding may go on together. It is submitted that no doubt, in this case, a civil suit for specific performance may also be maintained but that would never mean that a criminal case would not be maintainable.



Reference in this regard has been made to the judgment of the Hon'ble Supreme Court in the case of **Rajesh Bajaj Vs State NCT of Delhi and Ors.** reported in **(1999) 3 SCC 259**.

9. Having heard learned Senior Counsel for the petitioner, learned counsel for the complainant and learned APP for the State as also on going through the materials on the record, this Court notices that the petitioner has sworn affidavit and acknowledged receipt of Rs.38.50 Lakhs from the complainant in lieu of a piece of land, this being an admitted position coupled with the allegation that later on, he did not execute the sale deed and the cheques issued by him stood dishonored on presentation for want of sufficient fund, this Court being in agreement with the submission of learned counsel for the complainant, is not inclined to grant privilege of anticipatory bail to the petitioner.

10. Prayer is refused.

11. This application is dismissed.

12. In case, the petitioner surrenders and prays for regular bail within a period of four weeks from today, his prayer shall be considered on its own merit without being prejudiced by the order of this Court.

(Rajeev Ranjan Prasad, J)

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