

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58161 of 2023

Arising Out of PS. Case No.-1747 Year-2021 Thana- COMPLAINT CASE District- Araria

Upendra Kishore S/O Kaushal Kishore Resident Of Near Rajdhani
Apartment, Mahesh Nagar, P.O. Keshari Nagar, Patna, Bihar-800024.

... .. Petitioner/s

Versus

The State Of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sunit Kumar, Advocate

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

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH

ORAL ORDER

2 11-10-2023 Heard Mr. Sunit Kumar, learned counsel appearing

on behalf of the petitioner and Mr. Awadhesh Kumar Singh,

learned APP for the State.

2. The petitioner seeks pre-arrest bail in connection with Complaint Case No.1747 of 2021 dated 06.12.2021 registered for the offence punishable under Sections 406, 420, 120B of the Indian Penal Code.

3. Prosecution story, in brief, is that petitioner had committed fraud with the informant by undervaluing the price of the property, which was to be auctioned.

4. Learned counsel appearing on behalf of the petitioner submitted that petitioner is a Valuer duly registered under Section 34 AB of Wealth Tax Act, 1957, Government of India, for valuation of properties. Learned counsel submits that the valuation of properties had to be done as per the internal guidelines of the bank and all the nationalized banks follow the same procedure for valuation of property and, as far as, the role

of Valuer is concerned, it is only limited to the extent of the valuation of property and nothing more than that. He further submits that in the present case the petitioner was required to assess the value of property, which was to be auctioned and sale value of the property was fixed at Rs. 23,68,800/- by him. Learned counsel submits that the allegation made in the complaint against the petitioner is that he had undervalued the price of the property i.e. the nature of the land mentioned is commercial but the value given in his report is with respect to residential area. Learned counsel submits that the aforesaid property, which had to be auctioned, was declared as Non Performing Asset (NPA) and the Bank proceeded to auction in accordance with the SARFAESI Act (Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act), 2002 to realise the loss.

5. Learned counsel next submitted that the petitioner has no role, so far as, in declaring the amount of the property, which had been declared as Non Performing Asset (NPA), which is between the complainant and the Bank. He further submits that the complainant, instead of availing remedy under the provisions of SARFAESI Act (Securitization and Reconstruction of Financial Assets and Enforcement of Security

Interest Act), 2002, has filed frivolous case against the petitioner, who is a professional. Learned counsel further submits that the complainant had filed a writ petition bearing CWJC No.8883 of 2020 for quashing the possession notice dated 11.06.2020, issued by Respondent No.3, whereby Respondent had taken the possession of the properties since 11.06.2020, on the ground that complainant had failed to repay installment of the term loan amount since December, 2019 and the writ petition was dismissed vide order dated 08.02.2021 (Annexure P/8 Series). The complainant then filed an appeal bearing LPA No.174 of 2021. He further submits that the appeal was also rejected vide order dated 21.10.2021. In this background he submits that no case is made out against the petitioner under Sections 406, 420, 120B of the Indian Penal Code. Learned counsel submits that similarly situated persons have already been granted anticipatory bail by the Co-ordinate Bench of this Court vide order dated 13.09.2023 passed in Cr. Misc. No.50276 of 2023 and vide order dated 04.08.2023 passed in Cr. Misc. No.42207 of 2023.

6. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail and submits that *vakalatnama* had been filed on behalf of the complainant and requested for

adjourning the present case.

7. Considering the nature of allegation made in the complaint, as well as, the fact that the other co-accused persons, who are bank officials, and the auction purchaser have already been granted anticipatory bail, I am of the opinion that petitioner has, prima facie, made out a case to be released on pre-arrest bail under the facts mentioned in preceding paragraph of the order.

8. The petitioner, above named, is directed to be released on pre-arrest bail, in the event of their arrest or surrender before the Court below within a period of four weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) each with two sureties of the like amount each to the satisfaction of learned JM-Ist Class, Araria in connection with Complaint Case No.1747 of 2021 dated 06.12.2021, subject to the condition as laid down under Section 438(2) of the Cr.P.C.

(Purnendu Singh, J.)

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