

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55149 of 2022

Arising Out of PS. Case No.-120 Year-2022 Thana- KASBA District- Purnia

1. Kundan Sah Son of Late Niren Sah Resident of Mohalla- Tamanganj, Ward No.-15, P.S.- Kasba, District- Purnea
2. Gaurav Sah Son of late Niren Sah Resident of Mohalla- Tamanganj, Ward No- 15, P.S.- Kasba, District- Purnea
3. Rekha Devi Wife of Late Niren Sah Resident of Mohalla- Tamanganj, Ward No.-15, P.S.- Kasba, District- Purnea
4. Rahul Kumar Son of Guni Lal Sah Resident of Mohalla- Tamanganj, Ward No.-15, P.S.- Kasba, District- Purnea

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Dr. Bidhu Ranjan, Advocate Ms. Diksha Kumari, Advocate
For the Informant	:	Mr. Kumar Praveen, Advocate Mr. B.D. Singh, Advocate
For the Opposite Party/s	:	Mr. Aditya Narayan Singh.1, A.P.P.

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

4 15-05-2023 Heard Mr. N.K. Agrawal, learned senior counsel appearing on behalf of the petitioners; Mr. Kumar Praveen, learned Counsel appearing on behalf of the Informant and Mr. Aditya Narayan Singh.1, learned A.P.P. appearing on behalf of the State.

2. The petitioners seek pre-arrest bail in connection with Kasba P.S. Case No. 120 of 2022 for the offences punishable under Section 341, 323, 379, 420 and 406/34 of the Indian Penal Code.



3. The Prosecution story, in brief, is that the petitioners are witness to the agreement entered into by his father, who is no more, with respect to their ancestral land which was run in the name of late Jaduwati Devi. The petitioners were not in possession of the said land and an agreement was entered into that the informant will put her back into possession for which the petitioners had agreed to give 50% value of the land and in terms of the agreement, the petitioners after getting possession of the entire land have not returned 50% value of the land.

4. Learned senior counsel appearing on behalf of the petitioners submitted that the agreement itself appears to be executed with the malice and is not in accordance with the law as no one can take law in his own hand. However, the petitioners don't deny that the signature which has been put on the alleged agreement dated 23.01.2015 is forge and fabricated. It is further submitted by the learned senior Counsel that the dispute is purely civil in nature and the petitioners instead of availing to file money suit for recovery of the alleged money the F.I.R. has resorted to file the present criminal case. In this regard he has made reference to rely upon the Apex Court decision in case of ***Murari Lal Gupta v. Gopi Singh*** reported in ***(2005) 13 SCC***



699, in which Apex Court has held that merely because the petitioner had failed to honour the agreement, it cannot be said that he had cheated the respondent. Based on the said judgment, he further submits that in absence of averments made in the complaint are taken to be correct, so as to infer any fraudulent or dishonest inducement having been made by the petitioner, no case under Section 420 or 406 of Indian Penal Code is made out.

5. Learned Counsel appearing on behalf of the informant submits that the averment of dishonest inducement is reflected from the very fact that subsequent to the agreement without performing to pay back 50% of the sale value of the land mentioned in the agreement, the petitioner has proceeded to sale the same with another person and even after receiving consideration amount from both buyers he has not paid 50% of the sale value to the informant rather the same has secretly been executed to seven different persons on single day. He further submitted that informant was even neither informed nor witness to such sale agreement.

6. Having heard the rival submission of the parties and the materials available on the record, from perusal of the said agreement, it appears that the petitioners were under



obligation to pay 50% of the said value to the informant and same have not been done in the present case in spite of the sale agreement having been made subsequent to the said agreement between the parties, the informant instead of resorting to file civil suit has lodged the present F.I.R.

7. The Supreme Court in case of *Murari Lal Gupta v. Gopi Singh* reported in *(2005) 13 SCC 699 (supra)* has clearly held that in absence of any averment in the complaint so as to infer any fraudulent or dishonest inducement having been made by the petitioner pursuant to which the respondent parted with the money cannot be said that he had cheated the petitioner, which is substantiated with the agreement. The claim of the informant still premature.

8. At this stage Mr. Praveen Kumar, learned Counsel appearing on behalf of the informant, informs this Court that the original documents, which were possessed by the informant, were forcibly taken away by the petitioners the said fact is also substantiated from the bail application as well as in view of the fact that the F.I.R. has been lodged on the basis of the agreement dated 23.01.2015, which has been made part of the F.I.R. The parties have remedy before the Civil Court.

9. The petitioners, above named, are directed to



released on anticipatory bail in the event of their arrest or surrender before the learned Court below within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Ten Thousand only) each with two sureties of the like amount each, to the satisfaction of learned C.J.M., Purnea in connection with Kasba P.S. Case No. 120 of 2022, subject to the condition as laid down under Section 438(2) of the Cr.P.C. as well as subject to the condition that they will not refrain from participating in the civil proceeding which has been filed by the informant for recovery of money.

(Purnendu Singh, J)

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Nilmani/-

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