IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61127 of 2022

Arising Out of PS. Case No.-465 Year-2017 Thana- GAYA KOTWALI District- Gaya

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1. RAJ KUMAR AGARWAL Son of Krishna Das Agarwal R/o- CK- 57/28, Govindpura Chowk, Nichi Bagh, P.S.- Chowk Thana, Dist- Varanashi, Uttarpradesh, 221001
2. VASUDHA AGARWAL Wife of Raj Kumar Agarwal R/o- CK- 57/28, Govindpura Chowk, Nichi Bagh, P.S.- Chowk Thana, Dist- Varanashi, Uttarpradesh, 221001

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Prem Ranjan Raj, Advocate
For the Opposite Party/s	:	Mr. Shyam Bihari Singh, APP
For the Informant	:	Mr. Ravindra Kumar Priyadarshi, Advocate

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA

ORAL ORDER

4 03-07-2023 Heard learned counsel for the petitioners, learned counsel for the informant and learned A.P.P. for the State.

The petitioners apprehend their arrest in a case registered for the offences punishable under Sections 420, 406 and 34 of the Indian Penal Code read with Section 138 of the N.I. Act.

Learned counsel for the petitioners submits that the petitioners are persons with clean antecedent, it is next submitted that the present false case has been instituted only with a view to coerce the petitioners into submission for parting with the money in respect of the cheques which is alleged to have been issued by the petitioners, it is further submitted that the informant alleges that petitioner no.1 being Manager of M/s. Sushila Devi and Co. misappropriated 800 tonnes of urea which came to the notice when an inspection was held by authorities of the Tata Chemicals. It is next alleged that when petitioner no.1 was threatened with institution of a criminal case, the petitioners assured that they will dispose of their property and will deposit the amount in lieu of 800 tonnes of urea, thereafter they issued two cheques of Rs. 55 lakhs and Rs. 46 lakhs and odd in favour of the informant but since the money was to be transferred immediately to the company, hence the informant from his account, as detailed in the FIR, transferred an amount of Rs. 1,01,08,600/- in the account of the petitioner no.1 and accordingly the amount was distributed as per guidelines in the account of the dealers of the company, it is next alleged that thereafter the cheques issued by the petitioners on presentation for encashment bounced.

Learned counsel for the petitioners submits that petitioners have been falsely implicated in the present case, it is next submitted that petitioner no.2 is wife of petitioner no.1 and has nothing to do with the business in question as she resides in Varanasi where she was a teacher in a school and has now retired. It is further submitted that from perusal of the allegations as alleged in the FIR it would manifest that the informant has alleged that 800 tonnes of urea was misappropriated by petitioner no.1 and when the said fact came to the notice of the informant, based on an inquiry conducted by Tata Chemicals, thereafter the petitioners issued two cheques in favour of the informant and the informant in lieu whereof deposited an amount of Rs. One crore and odd for being transferred in the account of the company for being distributed amongst the dealers. Learned counsel submits that it absolutely does not stand to reason that as to why the informant took two cheques from the petitioners and thereafter deposited an amount of Rs. One crore and odd in the account of petitioner no.1 for being distributed as detailed in the FIR when the informant directly could have paid that amount to Tata chemicals with which company of the informant was dealing, learned counsel thus summits that this casts aspersion on the case of the prosecution.

Learned counsel for the petitioners further submits that it has been specifically pleaded at paragraph '8' of the anticipatory bail application that the sister and sister-in-law of the informant were dealing with the client on behalf of the company at Sasaram and petitioner no.1 merely was an Accountant in the Office. It is further submitted that specific pleading made at paragraph '8' of the anticipatory bail application is not rebutted by the informant in his reply, it is thus submitted that if what has been alleged in the FIR is true then definitely the informant would not have credited the amount of Rs. one crore and odd in the account of the petitioner no.1 for making payment to the company rather the informant directly could have transferred the said amount in the account of the company. Learned counsel next submits that this was done precisely because the office was being looked by the sister and sister-in-law of the informant and the petitioner no.1 was made a scapegoat and saddled with false allegations, when the urea was siphoned off by the persons who were incharge of the company at Sasaram, this perhaps explains why the petitioners were made to issue two cheques and thereafter the amount, as recorded hereinabove, was credited in the account of petitioner no.1 for making payment to Tata Chemicals, so that an impression is gathered that it was petitioner no.1 who was involved in the occurrence. It is further submitted that the case of the informant is that on presentation, both the cheques bounced but then no complaint came to be instituted nor the procedure as envisaged under the NI Act was followed rather an FIR came to be instituted when it is a settled principle of law that in cases of bouncing of cheque, FIR is not maintainable. Learned counsel for the petitioners next submitted that had an opportunity been given to the petitioners by way of a notice after bouncing of the cheques in question, then the petitioners could have furnished their explanation giving reasons that as to under what circumstances the cheques were issued but that opportunity never came to the petitioners.

Learned A.P.P. for the State and the learned counsel for the informant oppose the prayer for anticipatory bail of the petitioners but are not in a position to rebut the submissions of the learned counsel for the petitioners that there is no rebuttal of his pleadings made at paragraph '8' of the anticipatory bail application and the fact that for bouncing of cheque, an FIR is not maintainable.

Considering the submissions made by the learned counsel for the petitioners, the petitioners above-named, in the event of their arrest or surrender before the learned Court below within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/successor court in connection with Gaya Kotwali P.S. Case No. 465 of 2017 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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