

AD-217
Ct No.01
Jalpaiguri
02.02.2023
TN

**Calcutta High Court
In The Circuit Bench at Jalpaiguri
Appellate Side**

CRM (A) 785 of 2022

In Re: - An application for anticipatory bail under Section 438 of the Code of Criminal Procedure filed on **23.12.2022** in connection with **Matigara** Police Station Case No. **861** of **2022** dated **08.08.2022** under Sections **406/420/120B IPC, 1860.**

And

In the matter of: **Aditya Narayan Saha**

.... petitioner

Mr. Joyjit Chowdhury,
Mr. Somraj Paul,
Mr. Abhishek Singh

... for the petitioner

Mr. Niloy Chakraborty,
Mr. Dhiman Sil

... for the State

Learned counsel for the petitioner contends that although a power of attorney was initially registered and executed in favour of the petitioner on May 20, 2019, the same was apparently revoked subsequently before the Registry office. However, the communication regarding such revocation was made to the petitioner only after about four months.

In the meantime, the petitioner had transferred the property in favour of his son. It is further submitted that a civil suit for cancellation of the deed is already pending before the competent civil court and, as such, the nature of the dispute is civil. The remedy of the alleged victim at best lies in recovery of money.

Further, it is submitted that no notice under Section 41A of the Code of Criminal Procedure was served on the petitioner without any justification for doing so.

Learned counsel for the State opposes the prayer for anticipatory bail and submits that the amount of money alleged to be swindled is more than Rs.30 lakh.

That apart, the charge-sheet has not yet been filed in the present case and, as such, grant of anticipatory bail at present may affect adversely the investigation as well as the recovery of such money. Moreover, it is submitted that Clause 5 of the power of attorney itself indicated that the money received upon sale has to be handed over to the victim, which was not done or even alleged to be done in the present case. Even if the cash transaction-in-question took place, the same had to be done, since above an amount of Rs.50,000/- by due process of law which has not been complied in the present case.

That apart, it is submitted that the chain of events indicate the petitioner's involvement inasmuch as the revocation was done before the same registration office as the power of attorney was initially registered which should have been in the knowledge of the petitioner. Further, the petitioner not only sold the property to his son in hot haste, the son of the petitioner subsequently transferred it to a third party, namely, one Santosh Gupta.

Upon considering the rival submissions of the parties, we are convinced that the grant of anticipatory bail at this stage to the petitioner might prejudice the investigation.

Accordingly, CRM (A) 785 of 2022 is dismissed.

(Sabyasachi Bhattacharyya, J.)

(Rai Chattopadhyay, J.)