

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22331 of 2024

Arising Out of PS. Case No.-1906 Year-2005 Thana- PATNA COMPLAINT CASE District-
Patna

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1. Sashi Shekhar @ Shashi Shekhar S/O- Nawal Sharma R/O- Village- Khaira, P.S.- Khijar Sarai, Dist.- Gaya.
 2. Rakesh Ranjan @ Rakesh Kumar @ Rakesh Kumar Ranjan S/O- Nawal Sharma R/O- Village- Khaira, P.S.- Khijar Sarai, Dist.- Gaya.

... .. Petitioner/s

Versus

1. The State Of Bihar, Patna
2. Mr. Sant Prasad Sharma S/O- Late Badari Narayan Singh R/O- Village- Shahar Rampuar, P.S.- Naubatpur, Dist.- Gaya.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Y.C. Verma, Sr. Advocate
Mr. Manoj Kumar
For the Opposite Party/s : Mr. Nirmal Kumar Sinha

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

6 11-09-2024 1. Heard learned senior counsel for the petitioners,

Shri. Yogesh Chandra Verma and learned A.P.P. for the State.

2. The petitioners apprehend their arrest in connection

with Complaint Case No. 1906 (c) of 2005 registered for the
offences punishable under Sections 120B, 406, 420, 422 and
468 of the Indian Penal Code.

3. The learned senior counsel for the petitioners

submits that petitioners are persons with clean antecedent and
the informant alleges that being lured by an advertisement in
Hindustan (Hindi), the son of the complainant went to the office
of Bharati Consultancy Services at Verma Centre, run by the



petitioners, further the petitioners and their staff motivated his son for taking admission in 5 years MBBS course in D.Y. Patil Medical College at Pune under management quota and Petitioner No. 1 introduced himself as the Personal Secretary to Mr. D.Y. Patil and Rakesh Kumar Ranjan (Petitioner No. 2) introduced himself as owner of R.I.I.T. Computer Institute, Kankarbagh, further his son, being lured by the petitioners, made them meet the complainant and to assure the complainant, who is a retired Principal, made him talk to their father, Nawal Sharma, who was working as a teacher in a government school, who also convinced the complainant about the bonafides of the petitioners, further the complainant made a payment of Rs. 3 lakhs through cheque and Rs. 50,000/- by cash in the account of the Consultancy, thereafter complainant along with his son were called to Pune, accordingly they reached Pune on 9-9-2003, but the petitioners did not meet them rather avoided them, hence complainant realised that he had been cheated, thus came back to Patna on 12-9-2003, thereafter the petitioners contacted him and issued three cheques as detailed in the complaint, which on presentation for encashment bounced.

4. The learned senior counsel for the petitioners submits that from perusal of the office report dated 9-8-2024, it



would manifest that the complainant had died. It is submitted that since complainant has died, as such, no useful purpose would be served by keeping the anticipatory bail application pending as the petitioners are entitled for acquittal in terms of Section 256 of the Cr.P.C, which reads as follows:-

Non-appearance or death of complainant.—(1) *If the summons has been issued on complaint, and on the day appointed for the appearance of the accused, or any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day:*

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.

(2) *The provisions of sub-section (1) shall, so far as may be, apply also to cases where the*



non-appearance of the complainant is due to his death.

5. The learned senior counsel next submits that the provision itself contemplates the eventuality in the event if on issuance of summons the complainant does not appear, then what course the magistrate has to adopt, further if the complainant died, such situation is also contemplated in Section 256 of the Cr.P.C.

6. The learned senior counsel next submits that as far as merit of the case is concerned then whether the court would perpetuate an illegality by not granting the privilege of anticipatory bail to the petitioners, as from perusal of the allegation as alleged in the complaint, it would manifest that even the complainant committed an illegality as he intended to seek admission for his son in a medical college through back door. It is thus submitted that an illegality cannot be perpetuated.

7. The learned APP vehemently opposes the submissions made by the learned senior counsel for the petitioners and submits that the complaint case was instituted in the year 2005 and the instant anticipatory bail application has been filed in the year 2024, which amply demonstrates that the petitioners have no regards for the law, as they have approached



this Court at their leisure after a lapse of 19 years. It is also submitted that from perusal of the pleadings made in the anticipatory bail application, it would manifest that the same does not even remotely plead that as to why there was such a huge delay in approaching the Court seeking anticipatory bail.

8. The learned APP further submits that no doubt the argument raised by the learned senior counsel appearing on behalf of the petitioners with respect to Section 256 of the Cr.P.C cannot be countenanced, but then the Court presently is exercising its jurisdiction under Section 438 of the Cr.P.C and whether the accused are entitled for acquittal or not is in domain of the learned Judicial Magistrate. It is also submitted that the acquittal is not mechanical rather a judicial approach of the learned Magistrate would be required. It is further submitted that Section 2(wa) of the Cr.P.C defines victim and includes his/her guardian or legal heir, further Section 302 of the Cr.P.C is a provision by which the legal heir could be substituted, but then all these issues have to be seen by the learned Magistrate. It is also submitted that no doubt the submission of the learned senior counsel with regard to perpetuating an illegality is concerned, it is an issue which the Court must redress, but then it is submitted that from perusal of the allegations as alleged in



the complaint, it would manifest that it was not the complainant who had approached the petitioners for seeking admission for his son in a medical college through back door, rather the petitioners had published in the newspaper inviting application from intending candidates who intended to take admission in a medical college based on which the complainant along with his son went to the office and thereafter they realised that they were cheated.

9. Considering the submission made by learned APP, the Court is not inclined to extend the privilege of anticipatory bail to the petitioners.

10. Accordingly, the prayer for anticipatory bail of the petitioners is rejected.

(Satyavrat Verma, J)

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