

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41118 of 2024

Arising Out of PS. Case No.-1262 Year-2019 Thana- PATNA COMPLAINT CASE District-
Patna

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Kamlesh Kumar Verma @ Kamlesh Kumar Son of Late Rajendra Verma
Resident of Bhagwatipur, P.S.- Bihta, District - Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Manoj Kumar Verma Son of Late Rajendra Verma Resident of Village -
Bhagwatipur, P.S.- Bihta, District - Patna

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Abhishek Anand

For the Opposite Party/s : Mr.Sanjay Kumar Sharma

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

3 19-08-2024 1. Heard learned counsel for the petitioner, learned
A.P.P. for the State and learned counsel appearing on behalf of
the OP No. 2.

2. The petitioner apprehends his arrest in a case
registered for the offences punishable under Sections 323, 341,
420, 504 and 34 of the Indian Penal Code.

3. Learned counsel for the petitioner submits that
petitioner is a person with clean antecedent and is own brother
of the complainant. It is next submitted that the complainant
alleges that petitioner, in connivance with his father and
Shashikant, mortgaged the ancestral property of the complainant
as detailed in the complaint by forging his signature and



identification card and obtained a loan of Rs 52 lakhs for setting up a rice mill from Indian Overseas Bank, further his father leased the land in favour of petitioner on 31-3-2015 for setting up a rice mill. It is next alleged that the complainant came to know about the said misdeeds on 5-11-2017, thereafter the accused person, including the petitioner, gave an undertaking that they will give Rs 27 lakhs after selling the land of the rice mill, thereafter on 3-5-2019, the land was sold to Sanjay for an amount of Rs 1,16,85,000/- but the accused did not pay the amount as undertaken, further the accused on 12-6-2019 threatened when he demanded his share.

4. The learned counsel for the petitioner submits that from perusal of the allegation as alleged in the FIR, it would manifest that the dispute is purely civil to which a criminal colour has been given. It is next submitted that brother and father along with one another were arrayed as an accused. It is further submitted that as per own case of the complainant, he came to know about the misdeeds on 5-11-2017, but did not institute a case, rather was satisfied with an undertaking that his share would be returned. It is next submitted that the instant criminal case has been filed to recover the monetary dues under threat of arrest. It is also submitted that no doubt the property is



ancestral, but then the same had fallen in the share of the petitioner on partition as would manifest from partition deed dated 12-9-2004 (Annexure-4). It is next submitted that petitioner was not aware that the instant complaint case has been filed by the opposite party and he came to know about the same when non-available warrant of arrest was issued. It is next submitted that deliberately a complaint was filed instead of an FIR or else the matter would have been investigated and the correct fact would have come to the fore.

5. The learned APP and the learned counsel appearing on behalf of the OP No. 2 opposes the anticipatory bail application filed on behalf of the petitioner, but then are not in a position to rebut the submission of the learned counsel appearing on behalf of the petitioner that the complainant as per the complaint itself alleges that he came to know about the said misdeeds on 5-11-2017, but on the assurance given that money would be paid, he did not institute any case and later the instant criminal case came to be instituted as the money as agreed was not paid by the petitioner.

6. At this stage the learned counsel appearing on behalf of the petitioner submits that in the event if complainant is aggrieved by the fact that his share was fraudulently usurped



by the petitioner in connivance with his father, in that event, complainant has remedy of approaching a court of competent civil jurisdiction for getting the issue decided and in the event if complainant is interested in recovering the amount which he alleges in the complaint was assured by the petitioner then in that event the complainant has remedy of filing a money suit, but then the complainant cannot recover his money by putting the petitioner under fear of arrest, it is also submitted that Criminal Courts are not to act like recovery agent.

7. Considering the submissions made by the learned counsel for the petitioner, the petitioner above-named, in the event of his arrest or surrender before the learned trial court within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned trial court where the case is pending/successor court in connection with Complaint Case No. 1262(C) of 2019, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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