IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72079 of 2023

Arising Out of PS. Case No.-421 Year-2021 Thana- NATHNAGAR District- Bhagalpur

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MD. ASHRAF ALAM @ SARWAR SON OF MD. AHMAD RESIDENT OF VILLAGE- KHAIRA, POLICE STATION- SHAHKUND, DISTRICT- BHAGALPUR

... ... Petitioner/s

Versus

THE STATE OF BIHAR

... ... Opposite Party/s

==

with

CRIMINAL MISCELLANEOUS No. 51963 of 2023

Arising Out of PS. Case No.-421 Year-2021 Thana- NATHNAGAR District- Bhagalpur

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MD. ANWAR ALAM SON OF MD. AHMAD ALAM @ AHMAD RESIDENT OF VILLAGE- KHAIRA, PS- SHAHKUND, DIST- BHAGALPUR

... ... Petitioner/s

Versus

THE STATE OF BIHAR

... ... Opposite Party/s

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Appearance :
(In CRIMINAL MISCELLANEOUS No. 72079 of 2023)
For the Petitioner/s : Md. Najmul Hodda, Advocate
For the Opposite Party/s : Mr. Navin Kr. Pandey, APP
(In CRIMINAL MISCELLANEOUS No. 51963 of 2023)
For the Petitioner/s : Md. Najmul Hodda, Advocate
For the Opposite Party/s : Mr. Anuj Kumar Shrivastava, APP
For the Informant : Mr. Anamullah, Advocate

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CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL ORDER

7 30-08-2024

<u>CRIMINAL MISCELLANEOUS No.72079 of 2023</u>

Heard learned counsel appearing on behalf of the petitioner and learned Additional

Public Prosecutor appearing on behalf of the State.

2. The accused/petitioner is named in the F.I.R. and apprehended his arrest in connection with Nathnagar (Madhusudanpur) P.S. Case No. 421 of 2021 registered for the offences punishable under Sections 406, 420 and 504/34 of the Indian Penal Code.

3. The allegation against the petitioner is to transfer fraudulently sum of Rs. 11,00,000/- from the bank account of informant to the bank account of his brother namely Anwar Alam and wife Bibi Khushboo Jabbar.

4. Learned counsel appearing on behalf of the petitioner submitted that from the perusal of para no. 35 of the case diary, which is speaking about bank statement of concerned account of the informant since 03.06.2020 to 30.08.2021, where it nowhere appears that at any point of time, there was sum of Rs. 11,00,000/- available in said bank account of the informant as claimed which was alleged to be transferred fraudulently. It is also pointed out that said account is salary account of

the informant from where EMI was also paid regularly and therefore, allegation of cheating said to came to the knowledge of the informant after one year is apparently false on its face. It is submitted that both informant and petitioner were working together for one C.S.P. of RBL Bank (Nathnagar Branch, Bhagalpur) where out of certain business dispute present false allegation was raised. It is submitted that in fact petitioner transferred Rs. 5,42,917/- directly to the account of Rabindra Nath Tagore Hospital, Kolkata in the month of June 2021, where admittedly, mother of informant was under treatment and when said amount was asked to return, present false case was lodged. While concluding the argument learned counsel submitted that dispute between the parties now appears compromised through "*panchayti nama*" dated 03.07.2021. It is also submitted that petitioner is a man of clean antecedent.

5. Learned APP duly assisted by learned counsel appearing on behalf of the informant,

while opposing the prayer for anticipatory bail petition submitted that still the compromise as submitted above was not acted upon honestly and only Rs. 35,000/- was paid to the informant by the petitioner, whereas he fairly conceded that *factum* of compromise suggests that there is no any fixed time on or before which the amount agreed be returned to informant.

6. In view of aforesaid facts and circumstances and by taking note of the fact as informant and petitioner were working together for one C.S.P. of RBL Bank (Nathnagar branch, Bhagalpur) having previous history of financial transactions, where further dispute appears compromised, accordingly the petitioner above named, in the event of his arrest or surrender before the learned trial court within a period of four weeks, is directed to be released on bail, furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate, 1st Class, Bhagalpur/concerned trial court where

the case is pending in connection with Nathnagar (Madhusudanpur) P.S. Case No. 421 of 2021 subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

CRIMINAL MISCELLANEOUS No. 51963 of 2023

Heard learned counsel appearing on behalf of the petitioner and learned Additional Public Prosecutor appearing on behalf of the State.

2. The accused/petitioner is named in the F.I.R. and apprehended his arrest in connection with Nathnagar (Madhusudanpur) P.S. Case No. 421 of 2021 registered for the offences punishable under Sections 406, 420 and 504/34 of the Indian Penal Code.

3. The allegation against the petitioner is to transfer fraudulently sum of Rs. 11,00,000/- from the bank account of informant to the bank account of his brother namely Anwar Alam and

wife Bibi Khushboo Jabbar.

4. Learned counsel appearing on behalf of the petitioner submitted that from the perusal of para no. 35 of the case diary, which is speaking about bank statement of concerned account of the informant since 03.06.2020 to 30.08.2021, where it nowhere appears that at any point of time, there was sum of Rs. 11,00,000/- available in said bank account of the informant as claimed, which was alleged to be trasferred fraudulently. It is also pointed out that said account is salary account of the informant from where EMI was also paid regularly and therefore, allegation of cheating said to come to the knowledge of the informant after one year is apparently false on its face. It is submitted that both informant and petitioner were working together for one C.S.P. of RBL Bank (Nathnagar Branch, Bhagalpur) where out of certain business dispute present false allegation was raised. It is submitted that in fact petitioner transferred Rs. 5,42,917/- directly to the account of Rabindra Nath Tagore Hospital, Kolkata in the

month of June 2021, where admittedly, mother of informant was under treatment and when said amount was asked to return, present false case was lodged. It is also submitted that thrust of allegation is available against co-accused Ashraf Alam, where petitioner is a man of clean antecedent. While concluding the argument learned counsel submitted that dispute between the parties now appears compromised through "*panchayti nama*" dated 03.07.2021.

5. Learned APP duly assisted by learned counsel appearing on behalf of the informant, while opposing the prayer for anticipatory bail petition submitted that still the compromise as submitted above was not acted upon honestly and only Rs. 35,000/- was paid to the informant by the petitioner, whereas he fairly conceded that *factum* of compromise suggests that there is no any fixed time on or before which the amount agreed be returned to informant.

6. In view of aforesaid facts and circumstances and by taking note of the fact as

informant and petitioner were working together for one C.S.P. of RBL Bank (Nathnagar branch, Bhagalpur) having previous history of financial transactions, where further dispute appears compromised, accordingly the petitioner above named, in the event of his arrest or surrender before the learned trial court within a period of four weeks, is directed to be released on bail, furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate, 1st Class, Bhagalpur/concerned trial court where the case is pending in connection with Nathnagar (Madhusudanpur) P.S. Case No. 421 of 2021 subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Chandra Shekhar Jha, J.)

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