

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57848 of 2024

Arising Out of PS. Case No.-1246 Year-2022 Thana- FORBESGANJ District- Araria

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Kaushik Raj Son of Late Krishna Mohan Sah R/o 200, Hospital Road, Ward
No.- 6, Near Jagdamba Agency, P.S.- Forbesganj, District - Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mrigank Mauli, Sr. Advocate

Mr. Sanket, Advocate

Mr. Navin Kumar Singh, Advocate

For the Opposite Party/s : Mr. Jitendra Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 04-09-2024 Heard Mr. Mrigank Mauli, learned Senior Counsel

along with Mr. Sanket and Mr. Navin Kumar Singh, learned

counsels appearing on behalf of the petitioner and Mr. Jitendra

Kumar Singh, learned APP for the State.

2. The petitioner seeks pre-arrest bail in connection
with Forbesganj P.S. Case No. 1246 of 2022 registered for the
offence(s) punishable under Sections 406, 420, 385, 323, 504,
506/34 of the Indian Penal Code.

3. As per the allegation made in the FIR, the petitioner
had fraudulently not deposited a sum of Rs.1,10,000,00/- out of



sale proceed in the loan account of the Jagdamba Auto Traders, which was a partnership firm, run by the informant's husband and by the petitioner. Further allegation is that the petitioner, out of the said sale proceed, had opened two new business establishments namely S.K. Enterprises and Jagdamaba Enterprises and further allegation is that the petitioner, along with two dreaded criminals, being co-accused of the present FIR, and 5-10 unknown miscreants came to the show room of the informant's husband and forcibly snatched Rs.50,000/-, Books of Account and other documents.

4. Mr. Mrigank Mauli, learned Senior counsel along with Mr. Sanket, learned counsel appearing on behalf of the petitioner submitted that the informant, who is the wife of one Raja Khan, who is the business partner of the petitioner, had lodged the present FIR, even admitting that there is a dispute relating to settlement of account between the two partners, a false case has been lodged against the petitioner, in respect of committing forgery and swindling a sum of Rs.1,10,000,00/- from the loan account of the partnership firm, namely, Jagdamaba Auto Traders, which don't call for criminal prosecution, considering the fact that the parties can very well settle the dispute relating to the accounts and the profit and



liability, to which either of them are entitled for. Learned senior counsel further submitted that so far as, the allegation that the petitioner has allegedly contacted the two dreaded criminals, named in the FIR, is concerned, it is ornamental and just to enhance the gravity of the case. He further submitted that case and counter case have lodged between the parties, mainly relating to settlement of the accounts, profits and losses based on the audit reports and the Books of Account. The allegation that the petitioner has forcibly taken the Books of Account from the business establishment, also cannot be sustained, as the petitioner has also brought the same on record in the present bail application. In this regard, he has also referred several provisions of the Companies Act and submitted that in case, such Books of Account, even if became trace-less or had forcibly been taken by the petitioner, a certified copy of the same can very well be made available, either by the Chartered Accountant or by the Registrar of the Company. On these grounds, the petitioner seeks to be released on pre-arrest bail, also considering the fact that the FIR, which the petitioner has lodged against his partner, namely, Raja Khan (husband of the informant), has been directed to be released on pre-arrest bail by a co-ordinate Bench of this Court vide order dated 07.03.2024



passed in Cr. Misc. No.11225 of 2024 (Annexure-P/4).

5. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail, however, he admitted that the dispute primarily relates to the settlement of accounts between the two partners and the very nature of dispute is civil in nature.

6. Considering the rival submissions made on behalf of the parties, as well as, the submission made on behalf of the petitioner that the petitioner is one of the partners of the firm, namely, Jagdamaba Auto Traders and the settlement of accounts can very well be settled between the parties and the allegation, which has been made by the wife of the informant, namely Raja Khan, is to pressurise the petitioner in a false case of having committed fraud, I find that no case is made out under Section 420 of the Indian Penal Code and in absence of any ingredient, Section 406 of the Indian Penal Code also cannot be attracted. The dispute being purely civil in nature, I find, in light of the observation made by the Apex Court in paragraphs no. 9, 10 and 11 in the case of ***Bimla Tiwari vs. State of Bihar & Ors.*** passed in ***SLP (Crl.) Nos. 834-835 of 2023***, that the petitioner has, *prima facie*, made out a case to be released on bail. Paragraph Nos. 9, 10 and 11 are reproduced hereinafter :

“9. We have indicated on more than one occasion that the process of criminal law, particularly in matters of grant of bail, is



not akin to money recovery proceedings but what has been noticed in the present case carries the peculiarities of its own.

10. We would reiterate that the process of criminal law cannot be utilised for arm-twisting and money recovery, particularly while opposing the prayer for bail. The question as to whether pre-arrest bail, or for that matter regular bail, in a given case is to be granted or not is required to be examined and the discretion is required to be exercised by the Court with reference to the material on record and the parameters governing bail considerations. Putting it in other words, in a given case, the concession of pre-arrest bail or regular bail could be declined even if the accused has made payment of the money involved or offers to make any payment; conversely, in a given case, the concession of pre-arrest bail or regular bail could be granted irrespective of any payment or any offer of payment.

11. We would further emphasize that, ordinarily, there is no justification in adopting such a course that for the purpose of being given the concession of pre-arrest bail, the person apprehending arrest ought to make payment. Recovery of money is essentially within the realm of civil proceedings.”

7. The petitioner, above named, is directed to be released on pre-arrest bail, in the event of his arrest or surrender before the learned District Court within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Araria in connection with Forbesganj P.S. Case No. 1246 of 2022, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

8. The learned District Court is directed to verify the criminal antecedent of the petitioner, as stated in paragraph no. 3 of the bail application. If any other case is



pending against the petitioner, as what has been stated in
paragraph no. 3, this order will lose its force automatically.

(Purnendu Singh, J.)

Sanjay/-
Ashishsingh/-

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