

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55812 of 2024

Arising Out of PS. Case No.-325 Year-2022 Thana- KADWA District- Katihar

1. Shila Devi, Wife of Laxman Mahto, Resident of Village - Gaushala Road Sonaili, P.S.- Kadwa, District - Katihar.
2. Laxman Mahto, Son of Late Gena Lal Mahto, Resident of Village - Gaushala Road Sonaili, P.S.- Kadwa, District - Katihar.
3. Shinu @ Shinu Devi Daughter of Laxman Mahto Resident of Village - Gaushala Road Sonaili, P.S.- Kadwa, District - Katihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shailendra Kr. Singh, Advocate Mr. Karu Kumar, Advocate
For the Opposite Party/s	:	Mr. Nirmal Kumar Sinha, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

2 31-08-2024 Heard Mr. Shailendra Kr. Singh, along with Mr. Karu Kumar learned counsels appearing on behalf of the petitioners and Mr. Nirmal Kumar Sinha, learned APP appearing on behalf of the State.

2. The petitioners apprehend their arrest in connection with Kadwa P.S. Case No. 325 of 2022 registered under Sections 420, 406 and 120(B) of the Indian Penal Code.

3. As per the allegation made in the FIR, co-accused Mamta Devi along with the petitioners cheated the informant by giving her allurements of doubling the amount.

4. Learned counsel appearing on behalf of the



petitioners submitted that from the very perusal of the allegation made in the FIR, no ingredient of criminal breach of trust could be made out and at the same time, there is no allegation that the petitioners have committed fraud with the informant. Learned counsel further submitted that the basic ingredient of Section 405, having not been fulfilled, no case made out against the petitioners under Section 406 and 420 of the Indian Penal Code, considering the fact that co-accused Mamta Devi had allured the innocent persons and the petitioners had only arranged some money to get the said money doubled, as per the promise made by the informant and as such, in absence of any valid contract between the parties, the allegation made in the FIR is not sustainable.

5. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail.

6. Considering the nature of allegation made in the FIR, as well as, in absence of any valid contract between the parties and there is no material to show in respect of transaction of money, which has taken place between the informant and the petitioner nos.1, 2 and 3, I don't find any allegation sustained and considering the observation made by the Apex Court in paragraphs no. 9, 10 and 11 in case of ***Bimla Tiwari vs. State of***



Bihar & Ors. passed in SLP (Crl.) Nos. 834-835 of 2023,

which are, inter alia, 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.”

I am of the opinion that the petitioners have, prima facie, made out a case to be released on pre-arrest bail.

7. The learned District Court is directed to release the petitioners on anticipatory bail, in the event of their arrest or surrender before the learned District Court within a period of four weeks from today, on furnishing bail bond of Rs. 10,000/- (Ten thousand) each with two sureties of the like amount each, to the satisfaction of learned Chief Judicial Magistrate, Katihar in connection with Kadwa P.S. Case No. 325 of 2022, subject to



the condition 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 petitioners, as stated in paragraph no. 3 of the bail application. If any other case is pending against the petitioners, as what has been stated in paragraph no. 3, this order will lose its force automatically.

(Purnendu Singh, J.)

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