

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57512 of 2024

Arising Out of PS. Case No.-353 Year-2023 Thana- GAYA KOTWALI District- Gaya

Shiv Shankar Son of Late Ambika Prasad Resident of mohalla- Gewal Bigha,
Near Ramchandra Bhawan, P.s.- Civil Lines, Distt.- Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ashhar Mustafa, Advocate
For the Opposite Party/s : Mr. Rajendra Nath Jha, APP

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

2 04-09-2024 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. The petitioner apprehends arrest in connection with
Kotwali P.S. Case No. 353 of 2023 dated 26.05.2023, instituted
for the offence punishable under Sections 406, 420, 120B of the
Indian Penal Code.

3. The prosecution case, in short, is that informant
gave and advance amount of Rs. 12,01,000/- on 22.06.2022 to
the petitioner for purchasing a piece of land. Thereafter,
petitioner again took Rs. 5 lakhs from the informant and
whenever the informant asked the petitioner to execute



registered sale deed, he took time on pretext or the other. Then, on 25.01.2023, the informant served a legal notice to the petitioner and on receiving the said legal notice, petitioner gave threatening of dire consequences. Thereafter, co-accused Rinku Kr. Vaishkiyar met the informant and assured him that the entire land will be given to him if he is ready to spend some money. As he was known to the informant also, the informant relied on him and on the assurance of Rinku Kr. Vaishkiyar, the informant made payment of further Rs. 15 lakhs though the petitioner was demanding Rs. 20 lakhs. Thereafter, co-accused Rinku Kr. Vaishkiyar and his brother Pintu Kr. Vaishkiyar again visited the house of the informant and gave assurance that both the lands will be registered in his name but he will have to increase the consideration amount. Since the informant had already paid Rs. 32 lakhs earlier, he paid Rs. 15 lakhs again. The petitioner and his wife did not execute the sale deed even after several request and in this way Rs. 47,01,000/- of the informant has been embezzled.

4. Learned counsel for the petitioner submits that the petitioner is innocent and he has been falsely implicated in this case. It is further submitted that an agreement was executed by the petitioner in favour of informant on 22.06.2022 with respect



to Khata no. 20 (part) Municipal Plot No. 9695 (ka) for the consideration money of Rs. 57 lakhs out of which 12 lakhs (approx) was paid at the time of execution of agreement and later on 5 lakhs was given on 11.07.2022 and the said amount was received by the petitioner. The mode of payment of amount is mentioned in paragraph 3 of the agreement dated 22.06.2022. It is submitted that informant failed to pay the amount as per the terms and conditions of agreement. The last date of payment was 31.01.2023 and on that day the petitioner had to execute sale deed in favour of informant. All of sudden, petitioner received legal notice on 25.01.2023 asking to execute sale deed in favour of informant on or before 31.01.2023. In response to the legal, notice was sent on 10.02.2023 clarifying that since the informant failed to obey the schedule of payment prescribed in the agreement, the agreement naturally lost its force that is why the petitioner did not execute the sale deed. Moreover, petitioner is ready to return the said 17 lakhs to the informant at the time of furnishing the bail bond. So far second part of the allegation in the FIR is concerned, it is completely false and fabricated. There is no proof of further payment of Rs. 30 lakhs in two installments as also there is no mention of dates on which such payment was made. It is further submitted that dispute is purely



civil in nature and there is no any case filed for specific performance of contract against the petitioner and only to pressurize the petitioner to execute sale deed in favour of informant despite failing to obey the terms and condition of agreement, the present false case has been lodged by the informant. Lastly, it has been submitted that petitioner has no criminal antecedents.

5. Learned A.P.P. has opposed the prayer for bail of the petitioner.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest / surrender of the petitioner within a period of six weeks from today, in connection with Kotwali P.S. Case No. 353 of 2023, he/they shall be released on anticipatory bail upon furnishing bail bonds of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Gaya, subject to condition as laid down under Section 438(2) of the Cr.P.C. as also to the following conditions:-

I. The petitioner shall deposit the Demand Draft of Rs. 17 lakhs in favour of informant at the time of furnishing bail bonds before the learned lower court. Thereafter, the court



below shall issue notice to the informant and upon his appearance, the same shall be handed over to the informant upon due verification.

(Khatim Reza, J)

Sankalp/-

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