

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 60301 of 2023

Arising Out of PS. Case No.-1749 Year-2022 Thana- VAISALI COMPLAINT CASE
District- Vaishali

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1. Tun Tun Thakur S/O Late Ram Swaroop Thakur
 2. Kaushal Kumar S/O Late Lal Babu Thakur
Both Are R/O Village- Basudeopur Chaputa, Ps. Hajipur, Dist. Vaishali

... .. Petitioner/s

Versus

1. The State of Bihar
2. Arvind Kumar S/O Late Rama Nand Singh R/O Village- Saidpur Rajauli, Ps.
Hajipur, Dist. Vaishali

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Anil Kumar, Advocate
For the Complainant	:	Mr.Alok Kumar Singh, Advocate
		Mr.Navjot Yesu, Advocate
For the Opposite Party/s :		Mr.Ajit Kumar, APP

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 29-02-2024 Heard Mr. Anil Kumar, learned counsel appearing on behalf of the petitioners, Mr. Alok Kumar Singh along with Mr. Navjot Yesu, learned counsels for the complainant and Mr. Ajit Kumar, learned APP for the State.

2. At the very outset, learned counsel appearing on behalf of the petitioners informs that the petitioner no.1 (Tun Tun Thakur) has died during the pendency of the present bail application, as such he seeks permission to withdraw the present bail application with respect to petitioner no.1.

3. Permission accorded.

4. So far as petitioner no.2 (Kaushal Kumar) is



concerned, he seeks pre-arrest bail in connection with Complaint Case No.1749 of 2022, registered for the offences punishable under Sections 420, 406, 323 and 379/34 of the Indian Penal Code but the Magistrate has taken cognizance under Section 406 of the Indian Penal Code.

5. As per the allegation made in the FIR, the complainant had given total a sum of Rs.3,75,000/- to the petitioner by different means with a promise to register certain piece of land belonging to the petitioner in his favour.

6. Learned counsel appearing on behalf of the petitioner admits that the complainant had made an agreement with the petitioner to sale the land and he had given a sum of Rs.1,75,000/- by a cheque bearing no.408726 (undated). With respect to the alleged payment in cash is concerned, no evidence has been adduced by the complainant, as such, the petitioner is not liable to make payment of the same.

7. Learned counsel further submitted that there is no element of forgery to have been committed by the petitioner. As such, the allegations under Section 405 and 406 of the IPC are not attracted.

8. Mr. Alok Kumar Singh, learned counsel, has tendered his appearance on behalf of the complainant and has



submitted that an agreement to sale a certain piece of land appertaining to Khata No.38, Khesra No.1079 total area 61/2 decimals situated in village Senduari Baudeo @ Chaputa, District Vaishali on a total consideration amount of Rs.4,23,000/- has been made. The complainant, as per the promise, had paid Rs.3,75,000/- by different means and remaining Rs.48,000/- was to be paid at the time of registry of the land. The sale-deed was agreed by the petitioner to be executed within 11 months. The promise was breached by the petitioner fraudulently and he has not returned the entire amount till date even the mediation was made for the said purpose, which failed.

9. The complainant has remedy before the competent civil court to file a suit for the specific performance of the agreement.

10. Learned APP for the State has shown resistance that the matter is civil in nature and the parties may avail the appropriate civil remedy before the civil court having jurisdiction.

11. Heard the parties.

12. The allegation made in the complaint petition is of breaching the contract by non-performance of agreement on the



part of the petitioner, who has not executed the sale-deed in favour of the complainant, in terms of the agreement, as the complainant has paid a sum of Rs.3,75,000/- to the petitioner, in view of which the petitioner was to register the said piece of land belonging to him in favour of the complainant and at the time of registry, a sum of Rs.48,00/- was required to be paid by the complainant.

13. At this stage, learned counsel appearing on behalf of the petitioner submits that the petitioner is ready to return forthwith a sum of Rs.1,75,000/-, which was given by the complainant to him by way of cheque and with respect to the rest amount, he is agreed to return back and settle the dispute amicably within a period of six months.

14. Considering the aforesaid information given on behalf of the petitioner, I find that the petitioner has made out *prima facie* a case to be released on pre-arrest bail provisionally subject to condition that within a period of four weeks, if he returns back a sum of Rs.1,75,000/- to the complainant and thereafter, he proceed to amicably settle the dispute, he is directed to return the remaining amount as claimed by the complainant upon settlement of the dispute relating to money within a period of six months and the parties must file a joint



affidavit with respect to settlement of the dispute before the district court and the district court, if satisfied that the petitioner has deposited Rs.1,75,000/- within a period of four weeks, the petitioner no.2 (Kaushal Kumar) is directed to be released on **provisional** bail in connection with Complaint Case No.1749 of 2022 on such terms and conditions as laid down under Section 438(2) of the CR.P.C. with further condition as the district court deems fit and proper.

15. On filing of the joint affidavit with respect to the amicable settlement of the dispute within a period of six months or in alternative any suit for specific performance is filed by the complainant then in that case also, the provisional bail granted to the petitioner shall be made absolute on such terms and conditions as laid down under Section 438(2) of Cr.P.C. and as the district court deems fit and proper.

16. With the above observation/direction, the present bail application stands disposed of.

(Purnendu Singh, J)

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