

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74695 of 2023

Arising Out of PS. Case No.-4783 Year-2019 Thana- PATNA COMPLAINT CASE District-
Patna

Ashok Kumar Jha, Male, aged about 58 years, Son of Late Chandra Kant Jha,
Resident of Village- Khuskibagh, Anchal Purnea (East), P.S.- Purnea Sadar,
Distt- Purnea.

... .. Petitioner

Versus

1. The State of Bihar.
2. Gauri Shankar Gupta, Managing Director of Krishna Cement Company Ltd.,
situated at Parsauni, Bara, Nepal.

... .. Opposite Parties

Appearance :

For the Petitioner	:	Mr. Awadhesh Kumar Mishra, Advocate
For the O.P. No. 2	:	Mr. Hitesh Suman, Advocate
For the State	:	Mr. Ram Sumiran Rai, A.P.P.

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH
SINGH**

ORAL ORDER

7 23-04-2024 Heard learned counsel for the petitioner, learned
counsel for the opposite party no. 2 and learned Additional
Public Prosecutor for the State.

2. The petitioner is apprehending his arrest in
connection with Complaint Case No. 4783 (C) of 2019 dated
26.10.2019 registered for the offences punishable under
Sections 406, 420, 323 and 506 of the I.P.C. in which
cognizance has been taken for the offences punishable under
Sections 420, 323 and 506 of the I.P.C.

3. As per the prosecution case, the complainant being
the Managing Director of Krishna Cement Company Pvt. Ltd.,



situated in Nepal made a payment of Rs. 79,45,312.50/- in Indian Currency which is equivalent to Rs. 1,27,12,500/- in Nepali Currency to the petitioner for supply of 1,000 metric tons of clinker which is raw material for production of cement. However, no such supply was made nor amount was returned and even he was threatened in Patna which resulted into the complaint.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has been falsely implicated in this case. It is submitted that the amount in question which was given by the opposite party no. 2 to the petitioner for supply of clinker which is raw material for production of cement was positively deposited in the bank account of Jaypee Cement Group but the said raw material could not be supplied to the opposite party no. 2 because the EXIM Code which was required to import raw material from India to Nepal was not provided by the Nepal Government and for that reason, the petitioner could not import the clinker from India. The failure on the part of the petitioner was only due to the government policy of Nepal Government which was beyond control of the petitioner. It is further submitted that subsequently the petitioner arranged the clinker from the local market of Nepal and



provided the entire agreed quantity of raw material to the opposite party no. 2, hence, no case is made out against the petitioner. It is further submitted that the case is not maintainable in Patna because the cause of action took place in Nepal or partly in Purnea but no case in Patna because the meeting between the parties has never been held in Patna but the opposite party no. 2 has made concocted story in the complaint petition. It is further submitted that the petitioner had no intention to cheat right from the beginning. It is a mere breach of contract which gives rise to the civil liability of damage. Learned counsel for the petitioner placed reliance upon the case of *Vijay Kumar Ghai & Ors Vs. The State of West Bengal & Ors*, reported in *2022 LiveLaw (SC) 305*, passed in *Criminal Appeal No. 463 of 2022, (arising out of S.L.P. (Crl.) No. 10951 of 2019)*. The petitioner has two criminal antecedents in which he is on bail as stated in paragraph no. 3 of the bail application.

5. Learned A.P.P. for the State and learned counsel for the opposite party no. 2 have vehemently opposed the prayer for anticipatory bail of the petitioner. Learned counsel for the opposite party no. 2 by filing a counter affidavit on behalf of the opposite party no. 2 has categorically denied the statements made in paragraph nos. 6 and 7 of the bail petition of the



petitioner and has submitted that the petitioner has dishonest intention from the very beginning as he induced the opposite party no. 2 to transfer the money in question in his account and thus cheated him because he has no intention to provide any raw material at the factory premises of the opposite party no. 2. It is further submitted that after sending several reminders and legal notice dated 28.09.2018 to the petitioner, he has admitted that he has the money but since he does not had EXIM Code which is to be provided by the authorities of Nepal Government, he is unable to supply the raw materials. On 19.09.2019, the petitioner has also sent a mail to the opposite party no. 2 stating that he will provide the raw material from the factory of J.P. Cement, Bhilai to which he strongly objected because in agreement it was mentioned that the petitioner will provide the raw material to the factory of the opposite party no. 2. Thereafter, the petitioner called him in Patna to have a talk him and instead of providing material or returning money, he threatened him with dire consequences and has also assaulted him. Learned A.P.P. for the State placed reliance upon the case of *A.M. Mohan Vs. The State Represented by SHO and Another*, reported in *2024 INSC 233*.

6. Considering the aforesaid facts and circumstances



of the case as well as the nature of allegation, let the above named petitioner, in the event of his arrest/surrender within a period of six weeks from today, be enlarged on anticipatory bail on furnishing bail bond of Rs. 20,000/- (Twenty Thousand) with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate-Ist Class, Patna in connection with Complaint Case No. 4783 (C) of 2019, subject to the condition as laid down under Section 438(2) of the Code of Criminal Procedure.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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