

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.78000 of 2023**

Arising Out of PS. Case No.-1744 Year-2015 Thana- GAYA COMPLAINT CASE District-  
Gaya

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Mahesh Mistry @ Mahesh Mistri, aged about 69 years (M), Son of Ram Kishun Prasad @ Ram Swarup Prasad, Resident of Village- Baradih PS- Mufassil Dist- Gaya

... .. Petitioner/s

Versus

1. The State of Bihar.
2. China Mistry son of Late Bansi Mistry Village- Janakpur Ps- Mufassil Dist- Gaya.

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate  
For the Opposite Party/s : Mr. Dilip Kumar No. 1, A.P.P.

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

ORAL ORDER

2      15-01-2024                      Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, if any, within a period of three weeks from today.

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

3. The petitioner is apprehending his arrest in connection with Complaint Case No. 1744 of 2015 registered for the offence punishable u/ss 420 and 504 of the Indian Penal Code.

4. As per the prosecution case, an agreement was made on 30.07.2012 in regard to purchase the land of the petitioner. It is further stated that the accused persons including the petitioner took Rs. 75,000/- from the



complainant and gave him a land receipt of different land.

5. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. It is further submitted that the anticipatory bail application is maintainable despite the issuance of the process u/ss 82 and 83 of the Cr.P.C. The petitioner has no criminal antecedent as stated in para 3 of the bail petition.

6. Learned A.P.P. for the State and learned counsel for the informant has vehemently opposed the prayer for anticipatory bail of the petitioner. Learned counsel has further submitted that the instant anticipatory bail application is not maintainable as the process u/ss 82 and 83 of the Cr.P.C. has already been issued against the petitioner. The petitioner is declared a proclaimed offender. Learned counsel for the informant has further relied upon the case of ***(Abhishek vs. State of Maharashtra (2022) 14 SCC 529)*** where it was held that *“As regards the implication of proclamation having been issued against the appellant, we have no hesitation in making it clear that any person, who is declared as an ‘absconder’ and remains out of reach of the investigating agency and thereby stands directly at*



*conflict with law, ordinarily, deserves no concession or indulgence.”* Reliance has further been placed on the decisions of *(Lavesh vs. State (NCT of Delhi) (2012) 8 SCC 730, Adri Dharan Das vs. State of W.B. (2005) 4 SCC 303)* and *(Prem Shankar Prasad vs. State of Bihar 2021 SCC Online SCC 955)* and in the case of *(State of Haryana vs. Dharamraj (Cr. Appeal No. 2635 of 2023 @ out of SLP (Cri.) No. 2256 of 2022, reported in 2023 LiveLaw (SC) 739: 2023 INSC 784)* disposed of 29.08.2023 wherein the Hon’ble Apex Court has held that: *“Anticipatory bail can be granted to a person to a proclaimed offender only in exceptional and rare case.”* It is further submitted that the materials available on the record do not reveal any exceptional or rare case due to which the plea of anticipatory bail may be considered.

7. Considering the aforesaid facts and circumstances of the case as well as the petitioner having been declared a proclaimed offender, the anticipatory bail petition is not maintainable. Accordingly, the same is disposed of with direction to the petitioner to surrender before the Court below concerned within eight weeks from



the date of this order and the prayer for regular bail and the learned Court below will consider his prayer for regular bail in accordance with law without being prejudiced by this order.

8. The application stands disposed of.

(Chandra Prakash Singh, J)

Nilmani/-

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