IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76995 of 2023

Arising Out of PS. Case No.-3250 Year-2017 Thana- PATNA COMPLAINT CASE District-Patna

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Anjani Kumar Singh S/O Late Ramchandra Prasad Singh R/O Indrapuri, Road No-6, House No 6/102, P.O- Keshri Nagar, P.S- Patliputra, Distt.- Patna (BIHAR).

... ... Petitioner/s

Versus

1. The State Of Bihar
2. Umashankar Singh S/O Purushottam Prasad Singh R/O Village- Harail, P.S- Mohiuddinnagar, Distt.- Samastipur, Bihar- 848501. Also At- Flat No. 203, Savitri Enclave, Maurya Path, Khajpura, Near- Shyamal Hospital, P.S- Rajiv Nagar, Patna- 800014.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Ansul, Adv.
		Mr. Kumar Nikhil, Adv.
For the State	:	Mr. Arun Kumar Pandey, APP
For the Opposite Party No. 2:		Mr. Sanjeev Kumar, Adv

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CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

CAV ORDER

4 15-01-2024 Heard learned counsel for the petitioner and learned A.P.P. for the State and learned counsel for the opposite party no. 2.

2. The petitioner apprehends his arrest in Patna Complaint Case No. 3250(C) of 2017 registered for the offences punishable under Section 406, 420/34 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act pending in the Court of learned Judicial Magistrate, 1^{st} Class, Patna Sadar Court, (Patna).

3. As per the prosecution case, the complainant is the proprietor of M/S Medicine Palace. The petitioner has entered

into a partnership agreement with the complainant on 19.08.2015, for doing business of handling and transporting of food gains from Ex Rail Head Sarai to FSD, Hajipur, and any other places within the district of Vaishali for a period of two years. The petitioner approached and requested the complainant for investing surplus money in his business and further assured to get a handsome profit and, thereafter, the petitioner and the complainant started working together from December, 2014. It is alleged that at the time of execution of the partnership agreement the petitioner assured the complainant to provide 60% benefit over the profit amount. Complainant further alleged that only Rs. 9,30,000/- was deposited in the joint account towards his profit and the petitioner withdrawn different amount from different cheques. In the meantime, the complainant got information that the petitioner has opened a separate account in the Bank of Maharastra for the encashment of cheque of Food Corporation of India, then the complaint made a protest, as a result of which, a panchayati was held at the residence of petitioner's elder son, where the petitioner admitted his guilt and assured the complainant to make payment of Rs. 57,60,000/- towards the 60% profit of the complainant till date. Thereafter, the petitioner issued two post dated cheques. All the cheques dishonored with an endorsement-Account closed.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has not committed any offence and has falsely been implicated in this case. The petitioner has three criminal antecedents of similar nature. He submits that the other co-accused, namely, Vikash Vaibhav, who is the elder son of the petitioner, upon whom the allegation is of issuing cheques in name of the complainant, who though was not in business terms with the complainant with regard to the above discussed work or any other work, has already been considered for bail by the learned Court below with a condition to pay more than 20% of the cheque amount to the complainant @ Rs. 12,00,000/- in installments and which has been paid by him in compliance of the said order. He further submits that the complainant and the petitioner has already entered into a registered partnership deed with regard to the subject work tender on 19.08.2015, which is a part of the complaint petition of the complainant and which is binding on both the parties and there is a clause i.e. Clause No.17 to the registered deed, as per which in cases of any dispute in between the parties in relation to the work, the dispute shall be decided by an arbitrator in an arbitration proceedings and which was to be binding upon the parties. He further

submits that in this regard that the petitioner has already filed one Request Case bearing No.60 of 2023, for appointment of arbitrator for the adjudication of monetary claims/disputes between the parties and for recovery of excess payment and monetary claims under other heads like losses to the petitioner occurred due to breaches made by the complainant.

5. Learned counsel for the petitioner further submits that the complainant's participation with the petitioner for the work started after issuance of the N.I.T. for the alleged work itself and the said work in partnership with the complainant was commenced from April 2015 and ended by 15th of Dec-2015, that the parties were under liability to pay Rs.27,40,000/- each (Total-54,80,000) as Bank Guarantee against the work order which was 10% of the total work value and during this partnership period the complainant altogether invested a sum of Rs. 16,20,500/- (i.e. Rs.5,48,000 as EMD deposit through RTGS in Bank of Baroda A/C of Firm and Rs.10,00,000/ through account transfer in Bank of India A/c of the firm against which Fixed deposit of Rs. 13,70,000/- for Bank Guarantee against the work value was deposited in bank account of the petitioner's firm as fixed deposit and rest amount of Rs. 1,78,000/-was used as investment on part of the complainant along with Rs.72,000/-

as cash given to the petitioner by the complainant.

6. Learned counsel for the petitioner further submits that complainant also furnished property papers standing in the name of his brother, namely, Prem Shankar Singh, against the balance/remaining Bank Guarantee of Rs.41,10,000/- out of Rs.54,80,000- and the parties were also under liability to pay Rs. 13,70,000/- as 5% of the work value under the head of security deposit which was to be submitted to the department out of which 50% of it amounting to Rs.6,85,000/- was paid by them and rest 50% of 13,70,000/- was to be deducted from the running Bills by the department and out of the above mentioned Rs.6,85,000/- the complainant had paid Rs.2,50,000/- which is included in his total investment of 16,20,500/-, and the balance amount of Rs.4,35,000/- was given by the petitioner to meet the rest of the security deposit amount of Rs.6,85,000/- which is included in the petitioner's total investment of Rs.19,35,020/- (9,75,000/- for labour payment- admitted at page No.24 of the complaint petition and Rs.4,35,000/- under the head security deposit and Rs.5,25,020 against Bank charges for making bank guarantee and under other head/s). He further submits the petitioner has returned the amount invested by the complainant along with excess amount under the head of profit against his

total investment of Rs. 16,20,500 @ which mistakenly was calculated in excess by the petitioner and so it was calculated to Rs.32,52,000/- (as total amount) in hurry by that time. So, by the time of returning the investment made by the complainant amounting to Rs.16,20,500/- the investment on part of the petitioner by that point of time reached to Rs.35,55,520/- excluding the excess payment made by him to the complainant and further no investment under any head was ever made by the complainant after 15th of December 2015 till the completion of the project i.e. to say that the petitioner by his own effort and investment completed the entire project after breaches made by the complainant and the return of principal amount and profit part of the complainant was lastly returned by 3 March 2016 and in between 15th of December 2015 to 3rd of March 2016 no investment was ever made by the complainant against the agreed project work.

7. Learned counsel for the petitioner further submits that for the investments made by the complainant, he has already received total amount of Rs.32,52,000/-, through different modes against the invested principal amount and profit (in excess) earned from the same in share of the complainant. He further submits that, as per the complainant, it is alleged that

the petitioner without his consent and knowledge opened new current account for proceeding with the subject project, but the petitioner admittedly opened one new bank account in Bank of Maharashtra, for proceeding further with the project as because of breaches by the complainant and because of closure of partnership business between the parties there was no reason with the petitioner to carry/operate the joint account standing in name of both the parties as if, the petitioner would have continued with it then there would have occurred difficulties in withdrawal/transactions for smooth running of the business, as it requires signature of both the parties and in absence of the complainant the same was not possible. He further submits that the opening of the said business account was well within the knowledge of the complainant as transaction were made from the earlier joint bank account standing in name of the parties to this newly opened bank account which is not possible without signature of both the parties jointly holding joint bank account in their names.

8. Learned counsel for the petitioner further submits that the complainant at different occasions persuaded the petitioner to transfer certain sums in the bank account of his wife for purchasing one flat from the joint business account of

the parties, after repeated requests made by his wife Smt. Puja Singh and of the complainant with a promise to return the same after a short period of time after which altogether Rs.11,15,000/- was transferred in her account. He further submits that due to denial from returning the loan amount taken by the wife of the complainant and silence of the complainant upon this issue, it resulted into lodging of F.I.R by the petitioner bearing S.K. Puri P.S Case No.183 of 2017 dated 18.07.2017, under section 406 of I.P.C., which consequently resulted into lodging of series of criminal cases including the present complaint case by the complainant, his brother and by his known one against the petitioner all at the instance of the complainant.

9. Learned counsel for the petitioner further submits that as reflected in the impugned order the complainant has submitted regarding transaction of altogether 4 crores plus by the petitioner under business head by the department till the completion of the project, but the complainant is trying to exceed the amount claimed in his complaint petition amounting to Rs. 57,60000/- with the only purpose of misguiding the Hon'ble Court/s as the complainant has no transaction to show on record that he ever invested any sum under the business head after 15th of December 2015 against the agreed work, so, in

absence of any investment by the complainant after the breakdown of partnership does not entitle the complainant to claim any profit/s made out of the business which was carried alone by the petitioner.

10. Learned counsel for the petitioner further submits that the amount under head profit by the parties may vary after proper accounting, as the complainant has never done proper accounting with the petitioner and has not settled the business accounts till date inspite of repeated request by the petitioner. He further submits that, as per the complainant, he has submitted Bank Guarantee amount of Rs.70,00,000/- against the said partnership work, but only Bank Guarantee of Rs.54,80,000/- was demanded/required by the department against the subject work, so, there was no occasion for the complainant to submit Bank guarantee amount amounting to Rs.70,00,000/- and it is merely a false statement. He further submits that, as per the allegations of the complainant, one meeting was held in between the parties at the house of the petitioner and as per his statements in Essay that meeting was held on 31.05.2017, when the alleged cheques were issued by the son of the petitioner, but by that time there was a non-bailable warrant issued against the petitioner in Patliputra P.S

Case No.299 of 2016, in which the petitioner is on bail at present and which was lodged by the brother of the complainant in which the present complainant was a witness to that case, so, practically the situations were so adverse for the petitioner and there was no occasion for him to attend any meeting at his house especially with the complainant and which infers that the entire story narrated by the complainant is concocted and false.

11. He lastly submits that the present case relates to a business dispute and is purely civil nature and that the petitioner has purposely been made implicated and framed as an accused in this criminal case by the complainant.

12. Learned APP for the State as well as learned counsel for the complainant opposed the prayer for anticipatory bail and submits that petitioner is absconding and the process under section 82 IPC has been initiated by the learned JMFC, Patna dated 11.10.2023.

13. Learned counsel for the complainant further submits that that the petitioner had moved earlier for grant of anticipatory bail in the year 2018, vide A.B.P No. 7594 of 2018, which was later on dismissed for non-prosecution vide order dated 11.12.2018. Thereafter, the petitioner did not make any attempt to secure anticipatory bail and after the process under

section 82 Cr.P.C. was initiated, the petitioner has moved for grant of anticipatory bail. The petitioner's intention had always been to evade the process of law and callously misappropriated huge amount of money from the complainant and in this context, that the learned court below has rejected the anticipatory bail application of the petitioner.

14. Learned counsel for the complainant further submits that the petitioner has misappropriated a huge sum of money to the tune of Rs.81,14,687 from the complainant against which the petitioner, after calculations of shares and profits, had executed three cheques against the misappropriated amount bearing cheque numbers 003444 and 003445 amounting to Rs. 6,85,000 and Rs. 16,69,687 respectively. It is stated that the aforesaid mentioned amount in the preceding paragraph had been agreed upon to be paid to the complainant vide partnership deed in clause 13 (C) and 13(D). The petitioner had, after thorough calculation of the liabilities, owed to the complainant had executed the cheques which were dishonoured, and two Complaint cases has been filed by the complainant bearing Complaint Case No. 3250 of 2017 and Complaint Case No. 4657 of 2017.

15. Learned counsel for the complainant further

submits that in December 2014, the petitioner who was the sole proprietor of M/S Medicine Palace requested the complainant for partnership in a tender floated by FCI with promise of assured profits and returns along with 50% share in the firm. The tender value was Rs. 2,74,00,000/- (Two Crore and Seventy-Four Lakhs Rupees) and the work was to be completed within a period of 2 years, later on extended for 2 months. Initial money required to start this tender work as per the details are given below: -

> "A. Earnest Money Deposit of Rs.5,48,500, later on if the firm became successful/L.1 in the bid this EMD amount merged in Security Deposit) 100% deposited by O.P. No.2.
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> B. Security Deposit of Rs.13,70,000 (5% of Tender Value). 50% of SD amount Rs.6.85,000 was deposited and rest 50% deducted from running bills @ 5%.
>
> C. Bank Guarantee Rs. 27,40,000 (10% of Tender Value)
>
> D. Additional Bank Guarantee Rs. 27,40,000 (10% of Tender Value) in the case of no prior experience of the tender work. (Since M/S Medicine Palace had no work experience) 10% Additional Bank Guarantee was also paid by the O.P. No. 2.
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> Total Bank Guarantee of Rs. 54,80,000 (27,40,000 X 2)

E. Cash Margin 25% of total Bank Guarantee value comes to Rs. 13,70,000 in the form of Fixed Deposit (for Bank Guarantee of Rs. 54,80,000) 100% deposited by O.P. No.2.

F. Bank Charges Rs. 5,08,480 (2,54,240 X 2) for Bank Guarantee.

Total in Cash Rs. 25,63,480 (Rs. 6,85,000+13,70,000 +5,08,480 = 25,63,480) and Collateral of Rs.70,00,000 including Collateral Total Rs.95,63,480 out of this total require investment, Investment of O.P. No.2 Rs. 94,20,500 that is 98.5% Rs. 16,20,500+ Rs. 8,00,000 Gauri Shankar Singh = Rs. 24,20,500 + Collateral of Rs. 70,00,000)

Petitioner Investment Rs.1,42,980 only that is 1.5% only (Excluding 8,00,000 from brother of O.P. No. 2 which is his individual loan taken from him against which the brother of O.P. No. 2.

Investment details (A) Transferred Rs. 5,48,500, on 12.01.2015 in the firm's A/C No.00030200000370, Bank of Baroda

(B) Transferred Rs. 10,00,000, on 11.03.2015 in the firm's A/C No.441930100000031, Bank of India

(C) Transferred Rs. 3,00,000, on 12.03.2015 in the firm's A/C No.441930100000031, Bank of India. (On behalf of Gauri Shankar Singh)

(D) Cash Deposited Rs. 5,00,000, on 12.03.2015 in the firm's A/C No.441930100000031, Bank of India. (On behalf of Gauri Shankar Singh) all the above 3 (B.C and D) transaction between dated 11.03.2015 to 12.03.2015 in the firm's Bank A/C No. 441930100000031 can be verified purely by observing the said A/C."

16. Learned counsel for the complainant further submits that the petitioner had issued two cheques in favour of Gauri Shankar Singh bearing cheque Nos. 003703 and 003704 for Rs. 3,15,000 and Rs. 5,25,000 respectively. Petitioner had issued the Post- Dated Cheques to set off the loan taken by him which was to be invested in the partnership firm. When these two above mentioned cheques had been dishonoured, Gauri Shankar Singh has lodged a separate criminal case bearing Patliputra, P.S. Case no. 299/2016. He further submits that petitioner's claim of investment of Rs. 19,35,020/- and later Rs.35,55,520/- is false and fabricated.

17. Learned counsel for the complainant further submits that amount received from FCI against this tender work was Rs. 4.3 Cr, FY 2015-16 Rs. 1.9 Cr & FY 2016-17 Rs. 2.4 Cr) as per Experience Certificate issued by FCI dated 06.04.2017. Total Bill received from FCI in the firm's three different Bank Accounts against this tender work was Rs. 4,56,42,517 in the A/C No. 441920110000165 Rs.54,59,849, A/C No. 441920110000173 Rs. 84,67,019 and A/C No.

60240886450 Rs. 3,17,15,649).

18. Learned counsel for the complainant further submits that Vikas Vaibhav, the son of the petitioner, is very much interested, used to take part actively in the partnership business from beginning and he has been party to it because he signed on the Appendix-IV of FCI as witness on 13.01.2015 and an amount of Rs.10.25 lakhs of the firm was given to him as part of business. Vikas Vaibhav also issued a legal notice to O.P. No. 2 on 03.07.2017.

19. Learned counsel for the complainant further submits that the petitioner had earlier filed a false case against Puja Singh, wife of the complainant, and Uma Shankar Singh, the complainant as a counter blast bearing S.K. Puri P.S. Case No.183 of 2017 dated 18.07.2017 for offence punishable under Section 406 of the IPC. The Police submitted final forın in the aforesaid case finding the charges to be false and the Learned ACJM- IV, Patna has been pleased to issue process under Section 182/211of the IPC for abusing the process of law against the petitioner and malicious prosecution vide order dated 20.05.2022.

20. Learned counsel for the complainant submits that the petitioner and the complainant entered into a partnership

deed in which there is a clause i.e. Clause No.17 to the registered deed, as per which in cases of any dispute in between the parties in relation to the work, the dispute shall be decided by an arbitrator in an arbitration proceedings. The opposite party no. 2 made attempt to take recourse under the arbitration clause and accordingly send a notice through the registered post on 24.01.2018 for settlement of outstanding dispute between the parties, but the petitioner has not turned up and when the process of Section 82 of Cr.P.C., was issued against the petitioner, then he filed a Request Case bearing No. 60 of 2023 for the appointment of arbitration.

21. Learned counsel for the complainant further submits that when the process of Section 82 of Cr.P.C., has been issued, thereafter, the petitioner has filed the present anticipatory bail application. Earlier the anticipatory bail of the petitioner was withdrawn in 2018, itself.

22. Learned counsel for the complainant further relies upon the judgment of Hon'ble Apex Court passed in **SLP (Crl.) No. 2256 of 2022** in the case of ***State of Haryana vs. Dharamraj***, in which the Hon'ble Apex Court allowed the appeal and by impugned order of granting anticipatory bail by the Hon'ble High Court to the respondent is set-side, on the

ground that the process under Section 82 of Cr.P.C., was issued. He also relies upon the judgment of Hon'ble Apex Court in **Criminal Appeal No. 1209 of 2021** passed in the case of ***Prem Shankar Prasad vs. State of Bihar***, in which the Hon'ble Apex Court set aside the order of High Court by which respondent has been granted anticipatory bail when the process of Section 82 of Cr.P.C., was issued.

23. Considering the facts and circumstances of case, arguments of the parties and from perusal of the records and the judgments of the Hon'ble Apex Court, as the process of Section 82 of the Cr.P.C. has been issued, I am not inclined to enlarge the petitioner on anticipatory bail. The prayer for anticipatory bail of the petitioner is hereby rejected.

(Anjani Kumar Sharan, J)

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