

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17897 of 2025

Arising Out of PS. Case No.-1047 Year-2021 Thana- PHULWARISHARIF District- Patna

Md. Jahangeer @ Md. Jahangir @ Md. Jahangir Alam S/o Mohd. Khurshid Alam Resident of Milkiyana, Phulwarisharif, PS-Phulwarisarif, District-Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Ms. Roona, Adv.
For the State	:	Mr. Satyendra Narain Singh, APP
For the Informant	:	Mr. Abhijeet Kumar Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR
ORAL ORDER

3 14-05-2025 Heard Ms. Roona, learned Advocate for the petitioner and Mr. Satyendra Narain Singh, learned Additional Public Prosecutor for the State. The informant is represented through Mr. Abhijeet Kumar Singh, learned Advocate.

2. The petitioner apprehends his arrest in connection with Phulwarisharif P.S. Case No. 1047 of 2021, G.R. Case No. 8181 of 2021, registered for the offences punishable under Sections 420, 406/34 of the Indian Penal Code.

3. Based upon the written report, the prosecution alleges that the petitioner along with one Arif Imam Khan executed an agreement for sale in favour of the informant with respect to a piece of land measuring 1 katha 1 dhur 14 dhurki of Mauza Hussainpur for total consideration amount of



Rs.44,05,100/-. Notwithstanding the payment of Rs.38,00,000/-, when the informant asked to execute the sale deed, the same was refused and directed to deposit the rest of the amount to the tune of Rs.6,05,100/-. The informant insisted that the rest of the amount shall be paid at the time of registry but he refused to do so, which led to issuance of legal notice at the hands of the informant but the petitioner did not respond, leading to institution of the FIR.

4. Learned Advocate for the petitioner taking this Court to the agreement for sale dated 04.12.2018, executed by the petitioner and co-accused, contended that the terms of the agreement clearly mentions that the petitioner along with co-accused have already got an agreement for sale executed on 09.11.2018 by the land owner, Mobina Khatoon and, as such, they have arrived to execute '*Darbeyana*' in favour of the informant. It is further submitted that since the agreement for sale was a conditional sale, subject to execution of sale deed by said Mobina Khatoon through her power of attorney holder/her son Syed Iqbal Ahmed, as per the agreement dated 09.11.2018, but as the said Mobina Khatoon did not execute the sale deed, the petitioner along with co-accused could not execute the sale deed in favour of the informant. There was no dishonest



intention on the part of the petitioner; nonetheless, the informant, after knowing all these facts, has put his signature on the agreement for sale.

5. The bona fide of the petitioner is also apparent that he also filed a complaint case against Mobina Khatoon for non execution of sale deed, apart from institution of Title Suit No. 436 of 2021 for specific performance of the agreement for sale executed by Mobina Khatoon through power of attorney on 09.11.2018. Moreover, learned Advocate for the petitioner submits that even if the allegation is accepted on the face of it, that is out and out a civil dispute and no case either under Section 420 or Sections 406/34 of the Indian Penal Code is made out. To support the aforesaid contention, reliance has been placed on various decisions of the Apex Court, including the decision rendered in the case of *Radheyshyam & Ors. vs. State of Rajasthan & Anr. in Cr. Appeal No. 3020 of 2024*, wherein in identical situation the Court has held that “mere non registration of the sale or its refusal cannot amount to cheating. The delivery of the advance payment towards consideration was made in furtherance of an Agreement to Sell and it is not the case of the respondent that he was in any way deceived or duped to make such payments to the accused. Thus it is a civil dispute



and gives rise to informant /complainant to resort to the remedies provided under civil law by filing a suit for specific performance”.

6. On the other hand, learned Advocate for the State and the informant vehemently opposed the bail application and submitted that the petitioner in collusion with other co-accused person is neither executing the sale deed nor is ready to return the money to the tune of Rs.38,00,000/-, which has admittedly been received by the petitioner; all the more out of Rs.38,00,000/-, Rs.7,00,000/- has been deposited in the account of Mobina Khatoon. The aforesaid fact also suggests that right from inception, the petitioner had a fraudulent intention to cheat the informant.

7. Regard being had to the submissions made on behalf of the parties and considering the submissions advanced and the materials available on record which, *prima facie*, suggests that the matter is predominantly civil in nature, coupled with the fact that the informant has accepted the terms of the agreement for sale with an open eye and in token thereof he put his signature thereon; as also the settled legal position, let the petitioner abovenamed be released on bail, in the event of his arrest or surrender before the court below within a period of four



weeks from the date of receipt/production of a copy of this order, upon furnishing bail bonds of Rs.20,000/- (twenty thousand) with two sureties of the like amount each to the satisfaction of the learned ACJM-14th, Patna in connection with Phulwarisharif P.S. Case No. 1047 of 2021, G.R. Case No. 8181 of 2021, subject to the conditions laid down in Section 482(2) of the Bharatiya Nagrik Suraksha Sanhita, 2023, with the further condition that one of the bailors shall be the own/close family members of the petitioner.

(Harish Kumar, J)

Anjani/-

U		T	
---	--	---	--

