

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67310 of 2024

Arising Out of PS. Case No.-504 Year-2023 Thana- BARBIGHA District- Sheikhpura

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Ravi Kumar aged about 40 Years, Sex- Male, Son of Ashok Singh, Resident
of Village - Dhanpur, Police Station - Kashichak, District - Nawada

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. N.K. Agrawal, Sr. Advocate Mr. Bipin Kumar, Advocate
For the Informant	:	Mr. Sheo Nandan Prasad, Advocate Mr. Madan Prasad, Advocate
For the State	:	Mr. Ahmad Ali, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

5 17-01-2025 Heard Mr. N.K. Agrawal, learned Senior Counsel

along with Mr. Bipin Kumar, learned counsel appearing on
behalf of the petitioner; Mr. Sheo Nandan Prasad, learned
counsel appearing on behalf of the informant and Mr. Ahmad
Ali, learned APP for the State.

2. The petitioner seeks pre-arrest bail in connection
with Barbigha P.S. Case No. 504 of 2023, registered for the
offence punishable under Sections 406, 419, 410, 467, 468, 471,



504 and 506/34 of the Indian Penal Code.

3. As per the allegation made in the FIR, the informant and the petitioner had entered into an agreement dated 18.08.2021 for proposed sale of land belonging to one third person, namely, Late Mohan Dhanuk, son of Chhattar Dhanuk, resident of Dharmraichak, District- Lakhisarai, who is not party to the said agreement. The agreement of sale has been brought on record by the informant by way of 'Annexure-P/B' to the counter affidavit for alleged allegation that the petitioner had received a total sum of Rs. 1801000/- from the informant both by way of cash transaction, as well as, bank transaction.

4. Learned Senior Counsel appearing on behalf of the petitioner submitted that petitioner is innocent and he has falsely been implicated in the present case. He further submitted that from the bare perusal of the agreement, it would appear that the petitioner and the informant had entered into an agreement in respect of a land belonging to a dead person, one Late Mohan Dhanuk, whose details are given in the agreement dated 18.08.2021. It can only be said to be a sham transaction entered since the parties have no right/title over the piece of land described in the agreement. Learned senior counsel, in these backgrounds, submitted that the petitioner has agreed to return



the entire amount which he had received from the informant and to that effect he has also made a specific statement in paragraph no. 11 of the supplementary affidavit. Learned senior counsel has further questioned the intention of the informant, who has also with an intention to dupe the original land holder, had entered into a sham transaction, for which, he has alleged that he had already paid certain amount. However, learned counsel further submitted that petitioner is also ready to negotiate with the informant to return the amount as claimed by him in paragraph no. 2 of the counter affidavit, which requires some time and if the petitioner is not released on pre arrest bail, the same will not serve the purpose to either of the parties. On these grounds, petitioner seeks to be released on pre-arrest bail.

5. Learned counsel appearing on behalf of the informant submitted that petitioner has committed fraud with the informant by realising a total sum of Rs. 1801000/- about which, date-wise details of transaction has been given in paragraph no. 2 of the counter affidavit in respect of a land which don't belong to him. It is admitted that certain transactions were made by bank transaction and the rest amount were paid by means of cash transaction to the petitioner as and when, the informant could arrange the same from time to time



between the period 03.12.2020 to 20.03.2021. Learned counsel further submitted that the informant being innocent was having no knowledge about the owner of the said land but the petitioner convinced and gave assurance to get registered the land belonging to Late Mohan Dhanuk about which, he came to know much later. He further submitted that the agreement dated 18.08.2021 being a sham and fraudulent transaction, the petitioner, who has accepted/acknowledged in the agreement dated 18.08.2021 that he had received the amount mentioned therein is required to be returned to the informant.

6. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail.

7. Having considered the rival submissions made on behalf of the parties, as well as, the admitted fact that the agreement was executed between the petitioner and the informant on 18.08.2021, while the informant has admitted in paragraph no. 2 of the counter affidavit that on 03.12.2020, much before the date of agreement, he had given a sum of Rs. 1,01,000/- to the petitioner, similarly, on 30.12.2020, he had given Rs. 50,000/- to the petitioner, on 17.01.2021, he had given 1,00,000/- to the petitioner, on 17.02.2021, he had given Rs. 1,00,000/- to the petitioner, on 28.02.2021, he had given Rs.



3,00,000/- to the petitioner, on 06.03.2021, he had given Rs. 2,00,000/- to the petitioner, on 08.03.2021, he had given Rs. 1,50,000/- to the petitioner and on 20.03.2021, he had given 8,00,000/- to the petitioner. None of the amount was ever paid to the petitioner at the time of entering of the agreement, however, certain details are there in the recital of the agreement that altogether total amount of sixteen lac sixty six thousand was paid to the petitioner by the informant, to which the petitioner had agreed on 18.08.2021 and the agreement dated 18.08.2021 cannot be said to be an agreement of sale in absence of the same being not signed and agreed by the land owner.

8. The statutory provision of Section 54 of the Transfer of Property Act, 1882 provides that the title in immovable property valued at more than Rs. 100 can be conveyed only by executing a registered sale deed. This Section specifically provides that a contract for sale of immovable property is a contract evidencing the fact that the sale of such property shall take place on the terms settled between the parties but does not by itself create any interest in or charge on such property. Unless a registered document of sale is executed pursuant to the Agreement to Sell in favour of the proposed transferee, the title of the suit land continues to vest in the



original owner and the property remains in his ownership. The doctrine of part performance can be availed by the proposed transferee against the Transferor or any person claiming under him and not against the third party with whom he does not have any privity of contract.

9. The Apex Court in the case of ***R.K. Mohammed Ubaidullah & Ors. vs. Hajee C. Abdul Wahab (D) Ors.*** reported in ***(2000) 6 SCC 402*** observed that "*the person who purchases the property should have made necessary effort to find out whether the title or interest of the person from whom he is making purchase of the property was in actual possession of such property. Considering the effect of Section 19 of the Specific Relief Act, 1963, and Section 52 of TPA, 1882, it was held that subsequent 2023/DHC/000740 purchasers have to be fairly informed before he purchases the suit property.*"

10. This Court will not interfere in any manner in respect of the statement, which has been made in the supplementary affidavit filed on behalf of the petitioner that he will enter into negotiation with the informant to make payment of the remaining amount in view of the fact that very agreement between the informant and the petitioner appears to have been prepared for committing forgery with a common intention to



dupe the land of one Late Mohan Dhanuk. Such fraud has been seen common and is being committed in the State of Bihar in connivance with the staff of the sub-registry office. As no allegation has been made in any manner by the original land owner, who has not been kept in picture by the informant or by the petitioner, I find that the dictum of law laid down by the Apex Court in the case of ***Bimla Tiwari vs. State of Bihar & Ors.*** passed in ***SLP (Crl.) Nos. 834-835 of 2023***, will not come in aid of the petitioner. The parties have agreed to negotiate, who have entered into a sham transaction with common intention and the ingredients of Section 420 cannot be said to have not made out in the present case and are held responsible for their own act.

11. The petitioner, above named, is directed to be released on pre-arrest bail, in the event of his/her arrest or surrender before the learned District Court within a period of four weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Sheikhpura, in connection with Barbigha P.S. Case No. 504 of 2023, subject to the condition as laid down under Section 438(2) of the Cr.P.C.



12. The learned District Court is directed to verify the criminal antecedent of the petitioner as stated in paragraph no. 3 of the bail application. If any other case is pending against the petitioner as what has been stated in paragraph no. 3, this order will lose its force automatically.

(Purnendu Singh, J)

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