

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72590 of 2022

Arising Out of PS. Case No.-259 Year-2022 Thana- BODHGAYA District- Gaya

1. Vijay Kumar, Son of Late Kali Bhagat, R/O Vivekanand Nagar, Bangali Colony, VTC Sampatchak, Distt.- Patna, PIN- 800009
2. Meena Devi, Wife of Late Kali Bhagat, Resident of 511, Supriya Apartments, Plot No.20, Dwarka, Sector 10, South Delhi, PIN- 110075
3. Sarita Kumari @ Sarita, Wife of Sanjay Kumar @ Sanjay Prasad, Resident of Laxmipur, Ward No.25, P.S. Raxaul, East Champaran PIN 845305, At Present Residing At Flat No.511, Supriya Apartment, Plot No.20, Sector 10, Dwarka, Southwest Delhi- 1170075.

... .. Petitioners.

Versus

The State of Bihar

... .. Opposite Party.

WITH

CRIMINAL MISCELLANEOUS No. 3162 of 2023

Arising Out of PS. Case No.-259 Year-2022 Thana- BODHGAYA District- Gaya

Sanjay Kumar, S/o Late Kali Bhagat, R/O - Vivekanand Colony, P.S. Chowk, Distt. Patna, At Present 511, Supriya Apartment, Plot No.20, Sector 10, Dwarka, South West Delhi, 110075. Petitioner.

Versus

The State of Bihar.

... .. Opposite Party.

Appearance :

(In CRIMINAL MISCELLANEOUS No. 72590 of 2022)

For the Petitioners : Mr. Jitendra Prasad Singh, Senior Advocate, Mr. Suresh Prasad Singh No.1, Mr. Ashuthosh Nath, Mr. Roushan Kumar, Mr. Kumar Aaditya, Ms. Pratiksha Mishra, Advocates.

For the Informant : Mr. Ramakanat Sharma, Senior Advocate

For the State : Mr. Nagendra Prasad, APP

(In CRIMINAL MISCELLANEOUS No. 3162 of 2023)

For the Petitioner : Mr. Jitendra Prasad Singh, Senior Advocate, Mr. Suresh Prasad Singh No.1, Mr. Ashuthosh Nath, Mr. Roushan Kumar, Mr. Kumar Aaditya, Ms. Pratiksha Mishra, Advocates.

For the Informant : Mr. Ramakanat Sharma, Senior Advocate

For the State : Mr. Mithlesh Kumar Khare, APP



CORAM: HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
C.A.V. ORDER

9 31-05-2023 As both these bail applications have cropped up from the same police station case number, hence, with consent of parties, they are being heard together and disposed of by this common order.

2. Heard Mr. Jitendra Prasad Singh, learned senior counsel assisted by Mr. Ashuthosh Nath for the petitioners, Mr. Ramakant Sharma, learned senior counsel for the informant and learned APP for the State.

3. The petitioners apprehend their arrest in a case registered for the offences punishable under Sections 406, 420/34 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act.

4. The petitioners in association of other co-accused are said to have siphoned off huge amount of money taken on the assurance that they will be inducted as a partner in their hotel business but they were never paid any share of profit to the informant. It is further case of the informant that the petitioners decided to sell the said hotel for a sum of Rs. 10.50 crores but the informant objected for the same and asked them to execute the sale deed in his name and for this he had paid Rs. 87 lacs as *bai-baiyana* (agreement) on a non-judicial stamp of



Rs.1000/- but the informant has come to know that petitioners has executed the sale deed to a third party for a sum of Rs. 7.50 cores and returned the amount earlier paid by the informant through various cheques which got dishonored.

5. It is contended by learned senior counsel for the petitioners that no such occurrence as alleged ever took place. Petitioners have been falsely implicated in this case in order to settle a civil dispute by twisting the arm through abuse and misuse of the criminal process of law. The whole FIR is based upon the concocted story and supported by forged and fabricated documents. It is next contended that the so called cheques, which are alleged to have been issued by the petitioners, are not genuine and it is a matter of investigation. It is next contended that the case in hand has been lodged in retaliation to a case lodged by younger brother of the petitioner- Sanjay Kumar, who is also a co-accused in the present case, bearing Ranchi Sadar Khelgaon P.S. Case No. 08/22.

5.1. It is further contended that in both the accompanying bail petitions, Vijay Kumar is the brother, Meena Devi is the mother and Sarita Kumari is the wife of Sanjay Kumar, whereas, the informant Sneha Shree is in the business of real estate and works as a real estate broker with his brother



Shaurya Shree. It is next submitted that the petitioner Sanjay Kumar has issued 12 cheques each dated 16.03.2022 to the informant and his family members for the refund of the earnest money, the petitioner Sanjay Kumar has allegedly received, for the sale of the Hotel Heritage, Bodh Gaya in lieu of the agreement to sell dated 04.05.2021. When the informant and his family members deposited the said cheques the same got dishonored with remarks of “Payment stopped by Drawer” and therefore, the present F.I.R. has been registered.

5.2. It is further contended that the petitioners have been implicated in a false F.I.R. arising out of a criminal conspiracy hatched by the informant and his family members. The present F.I.R is divided into two parts, the first having a nature of a civil dispute and the other based on the bouncing of 12 cheques issued to the informant and his family members by the petitioner Sanjay Kumar.

5.3. It is next contended that the documents which the informant has been relying upon itself does not inspire confidence as the stamp papers have been procured during corona pandemic lock down and the same are unregistered and unnotarised. Furthermore, the *Bhag Bandhak* agreement is said to be executed on 15.04.2021 on a stamp paper which has



undoubtedly been purchased on 19.04.2021 and the same creates serious doubts of it being a sham document. The agreement to sell dated 04.05.2021 is also executed on the day of the *Dashkarm* of the husband of Meena Devi and therefore, the same also comes in the ambit of doubt. Needless to say that it is the specific case of the petitioners that their signatures have been forged on those documents and the said assertion corroborates with the doubtful genuineness of the said documents.

5.4. It is further contended that it is also imperative to clarify that for the violation of the agreement to sell, an [F.I.R.](#) is not maintainable as the law clearly recognizes difference between simple payment/ investment of money and entrustment of money or property and for any violation of the civil agreements the remedy is specifically given in Specific Relief Act along with other Civil Remedies and the recourse of filing of criminal cases for creating pressure upon the other party by giving a civil dispute the colour of a criminal dispute has always been discouraged by the courts and it is the law of the land.

5.6. It is further contended that it is the categorical case of the petitioners that the present [F.I.R.](#) is the part of a



larger criminal conspiracy hatched by the family of the informant with *mala fide* intention and designed to extort money from the petitioner, Sanjay Kumar, by implicating him and his family members through forged, fabricated and manufactured illegal documents and also by putting forged signatures of Sanjay Kumar, Meena Devi and Sarita Kumari on cheques and other documents. Contrary to what has been alleged in the F.I.R, it is the petitioners who are the victims of the nefarious criminal design hatched by the informant and his brother.

5.7. It is further contended that on the point of registration of the F.I.R under Section 138 NI Act and its maintainability, it is stated that the Negotiable Instrument Act is a special Act and Section 142 of the Act specifically provides for the filing of a complaint case in case of cheque bounce and no provision for filing of an F.I.R has been provided in the said Act. As the present F.I.R has been registered under Section 138 of NI Act, the same becomes irregular and unsustainable in the eyes of law and as such, the petitioners cannot be prosecuted under a provision of law which itself is a violation of the procedural law. It is lastly contended that the petitioners have no criminal antecedent as mentioned in para-3 of their



respective bail applications. Accordingly, it is prayed that the petitioners deserve the benefit of anticipatory bail by this Court.

6. *Per contra*, learned APP and Mr. Ramakant Sharma, learned Senior Counsel appearing on behalf of the informant vehemently opposing the prayer for bail of the petitioners have submitted that the informant and petitioners are businessmen having a hotel in the name and style of Hotel Heritage, Bodh Gaya. They are acquainted with each other since eight to nine years and their family also came into contact with each other.

6.1. Mr. Sharma further contended that the petitioners allured the informant to invest money in a real estate business at New Delhi where petitioner Sanjay Kumar deals with the investment of his family. Informant invested a sum of Rs.1.60 Crores in real estate business through petitioner Sanjay Kumar and within a reasonable time frame of two to three years informant got his invested money returned with profit margin without any complaint.

6.2. Mr. Sharma next contended that after gaining the confidence of the informant, petitioner Sanjay Kumar allured the informant and his family members to invest money for up gradation of facility and service at Heritage Hotel Bodh



Gaya. Informant invested Rs.9.31 crores from 03.04.2017 upto 04.05.2021 but petitioners' side had not returned the promised profit margin in term of series of agreement. Informant transferred Rs. 4.67 Crores in the account of accused petitioners and remaining Rs. 4.64 Crore was handed over in cash. Since the petitioners had not paid/returned the agreed profit margin, then the occasion arose for holding of panchayat in presence of friends and well wisher of the family where a decision was taken with the agreement of parties.

6.3. It is next contended that the petitioners executed an agreement in the nature of *Bhog Bandhak* on 20.01.2020 but have not acted upon and in the said *Bhog Bandhak* said Kali Bhagat who was alive at that time also put his signature. As the petitioners had not acted upon the instrument cum agreement signed on 20.01.2020, then a new instrument was created in the shape of Agreement cum *Bhog Bandhak* with the consensus of parties and informant was declared having share of 70% in the hotel and by adding the share mentioned in previous *Bhog Bandhak*, total share of informant and his family goes up to 95%. As the Heritage Hotel, Bodh Gaya stand in the name of Meena Devi and Sanjay Kumar was managing the Hotel business under Power of



Attorney granted by his mother, namely, Meena Devi. In the meantime, informant learnt that petitioners were negotiating for to sell the hotel in question to a 3rd party. Informant demanded his money then petitioners offered to sell the hotel to informant and his family on a consideration amount of Rs.10.50 Crore in presence of informant and other family members which was accepted by the informant and his family members and accordingly agreement for sale was executed on 04.05.2021 where petitioner Meena Devi put her signature along with Sanjay Kumar and two witnesses. It is next contended that petitioner, Meena Devi received Rs. 87,00,000/- in cash and in this way petitioners received total amount of Rs.9.31 Crore out of total consideration amount of Rs. 10.50 Crore. Informant agreed to pay Rs. 1.19 Crore to be paid at the time of execution of Sale Deed.

6.4. Mr. Sharma lastly contended that the petitioners by playing fraud executed Sale Deed in favour of 3rd party, namely, Abhilasha Kumari, then informant approached the petitioners for refund of his money, then petitioner, Sanjay Kumar handed over 12 hand written cheques in the name of the informant and his family members and details of cheque and cheque amount are mentioned in the F.I.R. The informant and



his family members presented the 12 cheques on 16.03.2022 given by the petitioner, namely, Sanjay Kumar through their respective bankers for encashment which were returned with a noting of stop payment. Informant tried to make contact with the petitioners but they all evaded the informant and then informant sent legal notice to the petitioners to all known addresses of petitioners at Delhi and Patna which were delivered. It is lastly contended that in view of the facts and circumstances as narrated above, the petitioners do not deserve anticipatory bail.

7. I have heard arguments on behalf of both sides and have gone through the material available on record.

8. As per the prosecution case, the main allegation is against petitioner, Sanjay Kumar, who had issued 12 cheques dated 16.03.2022 in the name of the informant and his family members for the refund of the earnest money but the same were got dishonored with remarks of "Payment stopped by Drawer". On the other hand, the specific case of the petitioners is that the said cheques were stolen from the possession of the petitioner, Sanjay Kumar for which he had instituted an online complaint with the Delhi Police on 17.03.2022 and further the petitioners' allegation is that the informant and his family members have



hatched a criminal conspiracy and with a calculated modus operandi and ulterior design have forged the signatures of the petitioner, Sanjay Kumar and manufactured the agreements, namely, the *Bhaag Bandhak* agreement and Agreement to sell. The further case of the petitioners is that the date of purchase of stamp paper differs from date of execution of agreement, the said agreement are unregistered and un-notarised, there is no signature of the petitioner, Sanjay Kumar on the first page and the signature of the executant differs on each page. It has also come on record that signatures of Meena Devi completely differs from the specimen signature and also from her signatures on the registered sale deed. The husband of Meena Devi died on 25.04.2021 and the *Dashkarm* of her late husband was on 04.05.2021, the said fact is clear from the newspaper cutting annexed at page no. 60 of the interlocutory application of the petitioners and as per the agreement to sell, the informant alleges the agreement was executed on the day of the *Dashkarm* of the husband of Meena Devi which is also highly unbelievable that too during corona Pandemic. It is not probable for the wife and the two sons to execute a deed on the day of *Dashkarm*. It is the settled custom in Hindu family of Bihar that no new work/project/ registration of sale deed or agreement



shall be done during these periods.

9. It is admitted fact that informant and petitioners' family are well acquainted to each other, the informant is in the business of real estate brokerage and the petitioner, Sanjay Kumar also deals in real estate development in Delhi/NCR and thus the informant offered the said Sanjay Kumar that if he may provide fund for sale/purchase of land in Bodh Gaya, he may pay the 50% share in the profit and return with his principal amount, which, perhaps, allured the informant to invest huge amount. Apart from the allegation of bounced cheques, the informant has alleged that an unregistered and un-notarised agreement to sell has not been honoured, whereas the case of the petitioners is that the cheques were stolen and for which an FIR was lodged at Delhi, the unregistered, un-notarised forged and fabricated agreement to sell and *Bhag Bandhak* documents clearly establishes the factum of criminal conspiracy hatched by the informant and his family against the petitioners and his family members.

10. From perusal of records, it appears that the learned court below initiated a proceeding under Section 82 Cr.P.C. against the petitioners during the pendency of the bail petition before the district court ignoring the fact that no summons



under Section 41 A Cr.P.C. was issued to the petitioners.

11. From perusal of records, it further appears that the signatures of the petitioner, Sanjay Kumar and petitioner Meena Devi, attested by the ICICI Bank (Annexure-9 to the I.A. No. 1/2023) completely differs from the signatures made on *Bhag Bandhak* agreement. From comparing the signature of the petitioner, Meena Devi made in the Bank documents, the registered sale deed dated 13.07.2021 executed by the said Meena Devi in favour of one Abhilasha Kumari, which is admitted by the informant, the signature of Meena Devi has been made as "मीनादेवी" i.e. without giving one space the signature has been made, whereas in the agreement to sell dated 04.05.2021, the signature of the said Meena Devi has been made as "मीना देवी" i.e. one space is given in between Meena and Devi, which casts a serious doubt about the prosecution case.

12. It is not in dispute that both the parties are in the business of real estate and the informant invested a huge amount in the said business through the petitioner, Sanjay Kumar and within a reasonable time frame of two to three years, informant got his invested money returned with profit margin without any complaint. Thereafter, as per the informant,



he invested Rs. 9.31 crores in Hotel Heritage but the same was misappropriated. The 12 cheques issued by the petitioner, Sanjay Kumar were got dishonored, whereas the case of the petitioner, Sanjay Kumar is that the said cheques were stolen and forged signature has been made on the cheques as well as on the various alleged agreements. These are disputed question of facts, which cannot be decided in this proceeding.

13. Having heard learned counsel for the parties at considerable length, after careful perusal of record of the case and giving thoughtful consideration to the rival contentions raised as also the fact that the dispute is civil in nature, I am inclined to grant the privilege of bail to the petitioners. Let the above named petitioners, be released on bail, in the event of their arrest or surrender before the learned Court below within a period of six weeks from today, on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) each with two sureties of the like amount each to the satisfaction of the learned Court below where the case is pending/successor Court in connection with Bodh Gaya P.S. Case No. 259 of 2022, subject to the condition as laid down under Section 438 (2) of the Cr.P.C., subject to further condition that:

1. They should be available as and when they are



required by the police for interrogation purposes;

2. Permission of the Court is necessary if they want to leave the country;

3. There shall be no threat or inducement of threat from them to any other person related to the case.

14. With the above observation and direction, both these appellations stand disposed of. Interlocutory application shall also stand disposed of accordingly.

(Anjani Kumar Sharan, J)

Trivedi/-

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

