

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.15477 of 2015

Arising Out of PS.Case No. -204 Year- 2014 Thana -WEST CHAMPARAN COMPLAINT District-
WESTCHAMPARAN(BETTIAH)

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Arjun Kumar son of Sukdeo Sao resident of Gyanbabuchak Telyapatti, P.S.
Town, Police Station Motihari, District Motihari (East Champaran).

.... Petitioner

Versus

1. The State of Bihar.

2. Suman Kumar Srivastava son of late Shambhu Saran Srivastava R/o
Kamalnath Nagar, P.S. Bettiah, District West Champaran.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ahtasahan Ali Khan, Adv.

For the Opposite Party/s : Md . Ansarul Haque (App)

For the complainant : Mr. Bimlesh Kumar Pandey, Adv.

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

3 14-08-2015 Heard learned counsel for the parties.

The petitioner facing prosecution for offence under sections 406, 420, 120B, 467, 468, 471, 386, 504, 506, 323/34 of the Indian Penal Code and 128 of the Negotiable Instrument Act had initially come out to say that though the cheque was issued by the petitioner for a sum of Rs.25 lacs but then it was not his own responsibility because it was the partnership firm of which the petitioner is the Managing Partner and as such, he has issued such cheque on behalf of all the four partners.

This Court was not inclined to accept this submission for a simple reason that whatever may have been the understanding between the four partners, it is the complainant who has received

the cheque from the petitioner as sole signatory. It is thus the petitioner who was responsible for encashment of the cheque amount and if the same is not encashed, it is the petitioner who will have to explain it.

In view of the aforementioned circumstances while this Court was not inclined to grant privilege of anticipatory bail to the petitioner, learned counsel for the petitioner himself comes out to offer that the petitioner will be ready to refund Rs.25 lacs to O.P.No.2 alongwith interest @ 9% per annum from 8.7.2013 to the date of full payment of Rs. 25 lacs but that should be kept subject to result of the pending trial. He also submits that it will be difficult for the petitioner to pay the amount of Rs.25 lacs as well as its interest @ 9% per annum since 8.7.2013 in one go and therefore, he should be given option of depositing Rs.1 lac per month till he would clear the entire liability of Rs.25 lacs alongwith interest @ 9% per annum.

Learned counsel for O.P.No.2 however submits that a sum of Rs.1 lac per month will be pittance keeping in view that the amount of Rs.25 lacs of O.P.No.2 has remained blocked since 8.7.2013 when the cheque was issued by the petitioner in favour of the complainant. He, however, submits that in case the petitioner is also ready to compensate for the delay that has already been

caused and would be further caused on account of payment of the amount by the petitioner in 25 instalments by way of payment of interest @ 9% per annum commencing from 8.7.2013, the petitioner may accept such payment without prejudice to his right being agitated before the court below in the pending trial.

Considering the fact that the petitioner has got no criminal antecedent and that he may have issued cheque under bonafide belief of his representing interest of all the four partners and he is also ready to refund the entire amount of Rs.25 lacs with interest @ 9% per annum w.e.f. 8.7.2013 to O.P.No.2, this Court would direct that if the petitioner, Arjun Kumar, surrenders before the court below within a period of four weeks from today and gives a written undertaking to pay Rs.25 lacs as well as interest @ 9% per annum w.e.f. 8.7.2013 by making payment in monthly instalments of Rs.1 lac each till full and final payment of amount, he shall be released on provisional bail on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of Sri A.K.Pathak, Judicial Magistrate, 1st Class, Bettiah, West Champaran in Complaint Case No. 204C/2014, subject to the following conditions:

- (i) The petitioner at the time of surrender shall deposit a sum of Rs.1 lac by way of Bank draft drawn in



the name of the complainant- O.P.No.2 which shall be handed over by the court below to O.P.No.2. On such furnishing of the amount the petitioner shall be granted provisional bail for a period of one month and this procedure shall continue till the petitioner shall clear the entire amount of Rs.25 lacs as well as its interest @ 9% per annum by making monthly payment by way of Bank draft in the name of O.P.No.2. In other words, if the petitioner will keep on depositing the amount of Rs.1 lac per month by every 5th of next month his provisional bail shall be kept on being renewed on month to month basis but failure even a single instalment will automatically entail the consequences of cancellation of provisional bail and the petitioner will be taken into custody.

(ii) It is also made clear that when upon making payment of 25 instalments of Rs.1 lac each commencing from the month of September, 2015 the petitioner shall pay the amount of interest of Rs.25 lacs @ 9% per annum to be computed from 8.7.2013 till its entire payment and such monthly instalment of Rs.1 lac each shall be paid by the petitioner after clearing the amount of Rs.25 lacs from the very next month. In this period of payment of interest also

the provisional bail of the petitioner shall be kept continuing alike the earlier period.

(iii) The petitioner's provisional bail shall be confirmed only when the petitioner would pay the entire amount of Rs.25 lacs alongwith interest @ 9% per annum commencing from 8.7.2013 till its full and final payment and that too only by way of monthly instalments of Rs.1 lac each by Bank draft in the name of O.P.No.2 and all such Bank drafts deposited by the petitioner in the court below by way of payment of monthly instalments at the time of provisional bail shall be handed over to the petitioner but they shall remain subject to result of trial and the O.P.No.2 shall be also liable to refund the entire amount to the petitioner if he is honourably acquitted of the charge.

(iv) That both the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as to how they are related with the petitioner. The bailors will also undertake to inform the Court if there is any change in the address of the petitioner.

(v) That the bailor shall also state on affidavit that he will inform the Court concerned if the petitioner is

implicated in any other case of similar nature after his release in the present case and thereafter the Court below will be at liberty to initiate the proceeding for cancellation of bail on the ground of misuse.

(vi) That the petitioner will be well represented on each and every date of trial and if he fails to do so on two consecutive dates, his bail will be liable to be cancelled on this ground alone.

surendra/-

(Mihir Kumar Jha, J)

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