

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16955 of 2015

Arising Out of PS.Case No. -1867 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

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1. Kunj Bihari Singh son of Prasadi Singh
2. Chhaya Devi, wife of Kunj Bihari Singh,
Both resident of 64-C, Anandpuri, Boaring Canal Road, P.S.- Sri
Krishnapuri, District- Patna

.... Petitioner/s

Versus

1. The State of Bihar
2. Manoj Kumar Singh son of Shiv Chandra Singh, of 110 Indranagar West
Boring C

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Arun Kumar Prasad, Advocate.

For the Opposite Party/s : Mr. Uday Pratap Singh(App)

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CORAM: HONOURABLE MR. JUSTICE MIHIR KUMAR JHA
ORAL ORDER

4 14-08-2015 Having regard to the nature of allegation for offence under Section 406 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act, this Court, by taking into account that the petitioners had issued five cheques on 28.04.2013 totaling to sum of Rs. Four lacs, they cannot take any defence that cheques were given only by way of security.

There is difference in law between cheque and the hand notes. A hand note is a promise to pay but a cheque is definitely for its encashment and therefore, the petitioners, when they had gone to issue five cheques in the name of O.P. No. 2, which were liable for their being encashed and that having been

not done, this Court would not find the petitioners entitled for privilege of anticipatory bail.

When such an observation has been made, learned counsel for the petitioners himself offers that the petitioners may be given an opportunity of depositing the said amount of Rs. Four lacs by way of demand draft in the name of the O.P. No. 2 at the time of surrendering.

That being so, if the petitioners, namely, Kunj Bihari Singh and Chhaya Devi would surrender before the court below within a period of four weeks from today, they shall be released on bail on furnishing bail bond of Rs. 10,000/- each with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate, Ist Class, Patna in connection with Complaint Case No. 1867(c) of 2013; subject to the following conditions:

- (i) That at the time of surrender, petitioners must produce the bank draft amounting to Rs. Four lacs in the name of O.P. No. 2, which will be handed over to the O.P. No. 2 but then it shall remain subject to the result of the trial.
- (ii) That both the bailors will be close family relatives of the petitioners, who will undertake an affidavit giving genealogy as to how they are

related with the petitioners. The bailors will also undertake to inform the court if there is any change in the addresses of the petitioners.

- (iii) That the affidavit shall clearly state that the petitioners are not accused in any other case and if they are, they shall not be released on bail.
- (iv) That the bailors shall also state on affidavit that they will inform the court concerned, if the petitioners are implicated in any other case of similar nature after their release in the present case and thereafter the court below will be at liberty to initiate the proceeding for cancellation of their bail on the ground of misuse.
- (v) That the petitioners will be well represented on each and every date in course of trial and if they fail to do so on two consecutive dates, their bail will be liable to be cancelled on this ground alone.

Sujit/-

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(Mihir Kumar Jha, J)