

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.39590 of 2014

Arising Out of PS.Case No. -2688 Year- 2012 Thana -MUZFFARPUR COMPLAINT CASE
District- MUZAFFARPUR

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RAJESH PRASAD SINGH SON OF H.N. PRASAD SINGH RESIDENT
OF VILLAGE - LAKHANCHAK, P.S. - MOKAMA, DISTRICT- PATNA.
..... PETITIONER/S

VERSUS

THE STATE OF BIHAR OPPOSITE PARTY/S

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with

Criminal Miscellaneous No.39629 of 2014

Arising Out of PS.Case No. -2573 Year- 2012 Thana -MUZFFARPUR COMPLAINT CASE
District- MUZAFFARPUR

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RAJESH PRASAD SINGH SON OF H.N. PRASAD SINGH,
PROPRIETOR OF KRISHNA DIARY, VILLAGE - LAKHANCHAK, P.S.
- MOKAMA, DISTRICT- PATNA.

..... PETITIONER/S

VERSUS

THE STATE OF BIHAR OPPOSITE PARTY/S

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Appearance:

(In Cr. Misc. No.39590 of 2014)

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

For the Opposite Party/s : Mr. Shardanand Jha, APP

(In Cr. Misc. No.39629 of 2014)

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

For the Opposite Party/s : Mr. Uday Chand Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

5 16-04-2015 Heard learned counsel for the petitioners as well as
learned Additional Public Prosecutor.

Because of the fact that in Cr. Misc. No.39590 of
2014 as well as Cr. Misc. No.39629 of 2014 petitioner is the
same, complainant is the same and the facts of the case are the
same, save and except difference in the date of occurrence on
account of dishonour of the cheques which the petitioner had
given to the complainant in lieu of persisting legal demand on
account of his declination to return back the amount which the

petitioner had accepted as an earnest money against the land for which, both the parties have negotiated. Consequent thereupon, both the petitions have been heard together and are being disposed of by a common order.

Learned counsel for the petitioner submits that petitioner has not entered into an agreement with the complainant rather he had entered into an agreement with one Ashutosh Kumar and on account thereof, the present prosecution happens to be bad. It has also been submitted on behalf of petitioner that he is ready to execute sale deed in favour of Ashutosh Kumar with regard to other lands because of the fact that the earlier negotiated survey plot no.1674, 1675 and 1676 have already been disposed of since before negotiation. In an alternative it has also been submitted as the complainant, Pawan Kumar Chaudhary is a fictitious person on account thereof, he is not entitled to receive back the money nor he had paid the money. As such, petitioner should be granted anticipatory bail.

At the present moment on query made by the Bench, the learned counsel for the petitioner submits that cognizance has also been taken under Section 138 of the NI Act. That being so a query has again been made with regard to serving of advocate notice by the complainant whereupon learned counsel for the petitioner answered in an affirmative. Then again it has been queried whether the advocate notice happens to be on behalf of complainant Pawan Kumar

Chaudhary which has been answered in an affirmative. When query has been made that whether status of Pawan Kumar Chaudhary has been challenged by way of reply of Advocate notice the learned counsel fairly concedes that not at all.

The nature of negotiation to purchase the land always happens to be dominant feature of the purchaser. Whether it happens to be a farzi, benemi or the seller is not in a position to challenge and that being so, for the present, the contention raised on behalf of petitioner is not at all found tenable.

That being so, petitioner is not entitled for grant of anticipatory bail as he had flatly refused to acknowledge the complainant. Consequent thereupon, both the petitions are rejected.

(Aditya Kumar Trivedi, J.)

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