

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.42508 of 2015

Arising Out of PS.Case No. -13281 Year- 2014 Thana -BEGUSARAI COMPLAINT CSAE District-
BEGUSARAI

1. Amit Kumar S/o Arjun Mishra

2. Arjun Mishra S/o Late Ramnandan Mishra

Both are Resident of Village-Chak Punarbash, P.S. Matihani, District-
Begusarai. Petitioners

Versus

1. The State of Bihar.

2. Sanjay Singh S/o Late Amin Singh Resident of Village-Jokiya, P.S.-
Bhagwanpur, District- Begusarai. Opposite Parties

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur, Advocate
Mr. Amit Kumar, Advocate

For the Opposite Party/s : Mr. Lalan Kumar, APP

For the O.P. No. 2 : Mr. Jai Prakash Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

6 22-06-2016

Heard learned counsel for the petitioners, learned
counsel for the State and learned counsel for the
complainant/O.P. No. 2.

The petitioners seek pre-arrest bail in connection
with Complaint Case No. 13281C of 2014 in which cognizance
has been taken for the offences punishable under Section 420 of
the Indian Penal Code and Section 138 of the Negotiable

Instruments Act (For short 'N. I. Act').

It is contended by the learned counsel for the petitioners that the offence punishable under Section 138 of the N.I. Act is bailable and the essential ingredients required for constituting an offence punishable under Section 420 of the Indian Penal Code are not attracted in the present case. Referring to Section 26, 29 and 190 of the Code of Criminal Procedure as also Schedule-I and Schedule-II of the Code of Criminal Procedure, it has been submitted that the order dated 19.02.2015 passed by the learned Judicial Magistrate-2nd Class, Begusarai whereby the petitioners have been summoned is not tenable in the eye of law.

On the other hand, learned counsel for the O.P. No. 2 has vehemently opposed the application for grant of pre-arrest bail to the petitioners. He has submitted that after taking Rs. 12 lakhs from the complainant of the case, the petitioners have failed to fulfil their promise of getting the sale deed executed in favour of the complainant. He has further contended that in view of the express provision prescribed under Section 190 of the Code of Criminal Procedure, a Magistrate of 2nd class is empowered to take cognizance of an offence punishable under Section 420 of the Indian Penal Code and 138 of the N.I. Act.

Be that as it may, regard being had to the nature of allegation, in the event of arrest or surrender in the court below within a period of six weeks from today, the petitioners are directed to be released on anticipatory bail on furnishing bail bond of Rs. 10,000/- (rupees ten thousand) with two sureties of the like amount each to the satisfaction of the learned Judicial Magistrate-1st Class, Begusarai in connection with Complaint Case No. 13281C of 2014 subject to the conditions as laid down under Section 438 of the Code of Criminal Procedure.

(Ashwani Kumar Singh, J.)

Sanjeet/-

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