

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.40731 of 2016

Arising Out of PS.Case No. -1534 Year- 2015 Thana -KATIHAR COMPLAINT CASE District-
KATIHAR

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1. Nitin Kumar S/o Harish Chandra prasad Ambastha
2. Piyall Das W/o Nitin Kumar
3. Harish Chandra Prasad Ambastha S/o Late Suresh Chandra Prasad all
Resident of Mohalla- Katihar High School Road, P.S.-Katihar, Town
District-katihar

.... Petitioner/s

Versus

1. The State of Bihar
2. Awadesh Chandra Verma S/o Late Ganga Prasad Verma Resident of
Mohalla-New Officers Colony, Mirchaibari, Katihar. P.S.- Sahayak,
District-Katihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nafisuzzoha, adv.
For the State : Mr. Md. Fahimuddin, APP No. 235
For opposite party No. 2 :Mr. Manish Kumar No. 13, adv. with
Mr. Rohit Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

4 29-11-2016 Counter affidavit is filed on behalf of the

complainant/opposite party No. 2. Let it be kept on record.

Heard the parties.

Petitioner No. 1 namely, Nitin Kumar was arrested

during pendency of this petition and his prayer for anticipatory
bail has already been dismissed as withdrawn vide order dated 20-
09-2016.

So far as petitioner Nos. 2 & 3 namely, Piyall Das
and Harish Chandra Prasad Ambashtha are concerned; they

apprehend their arrest in connection with Complaint Case No. 1534 of 2015 and it is submitted that as a matter of fact, petitioner No. 1 namely, Nitin Kumar has business transaction with the complainant and before the court below, he assured the complainant to return the amount, in question, and taking note of the aforesaid fact, the learned Sessions Judge, Katihar granted him provisional bail vide order dated 18-10-2016 passed in B.A. No. 1225 of 2016.

It appears from the materials, available on the record that on the basis of complaint petition, the court below found prima facie case under Sections-406, 420 of the Indian Penal Code and Section-138 of N.I. Act and, issued summons against the petitioners and other accused to procure their attendance but petitioners did not appear, resulting issuance of warrant of arrest against them. However, a coordinate bench of this court has already held that if, only summons is issued in complaint case, the accused does not have apprehension of arrest. Moreover, taking note of peculiarity of this case, this petition stands disposed off giving direction to petitioner Nos. 2 & 3 namely, Piyall Das and Harish Chandra Prasad Ambashtha to surrender before the court below within four weeks from the date of receipt/production of copy of this order and, if, they do so, the

learned court below shall consider the regular bail application of the petitioner Nos. 2 & 3 on its own merit without being prejudiced by this order and, shall pass appropriate order on the day of their surrender, particularly, keeping in mind that co-accused Nitin Kumar, who has assured to return the amount, in question to the complainant, has already been granted privilege of provisional bail by learned Sessions Judge and, furthermore, petitioner Nos. 2 & 3 namely Piyall Das and Harish Chandra Prasad Ambashtha do not have any specific allegation in this case.

A.K.V./-

(Hemant Kumar Srivastava, J)

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