

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.44828 of 2016

Arising Out of PS.Case No. -308 Year- 2015 Thana -COMPLAINT CASE District- BANKA

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Dhananjay Prasad @ Pintu son of Nandlal Sah, resident of village-
Karhariya Road Ward No. 10, P.S. Banka, District Banka State Bihar.

.... Petitioner

Versus

1. The State of Bihar.
2. Suman Kumarn Gupta son of late Rajendra Gupta, resident of village-
Karhariya Road, Banka, Ward No- 10 P.S. and District- Banka.

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. Brij Nandad Prasad, Advocate

For the Opposite Party/s : Mr. Ram Sevak Choudhary

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA
ORAL ORDER

2 06-12-2016 Heard learned counsel for the petitioner as well as learned
Addl. Public Prosecutor for the State.

Petitioner apprehends his arrest in connection with
Complaint Case No.308 of 2015 for the offences.registered under
sections 420, 323 and 504 of the Indian Penal Code.

The accusation against the petitioner is that he took near
about Rs.6,00,000/- and executed an agreement for sale on
4.11.2014 but did not execute absolute sale deed and when
complainant asked the petitioner to execute absolute sale deed, the
petitioner and co-accused assaulted him with fists and slaps. The
complainant filed complaint petition which was inquired and
having found prima facie case under Sections 420, 323 and 504 of



the I.P.C., the court below issued summons but when petitioner failed to appear before the court below, warrant of arrest was issued against him on 28.7.2016 and thereafter, petitioner has preferred this petition.

A Co-ordinate Bench of this Court has already held that in a complaint case if a summon is issued, the petition under Section 438 of the Cr.P.C. is not maintainable as the accused does not have any apprehension of arrest.

In the present case, admittedly, enquiring court issued summon but when petitioner failed to appear, the warrant of arrest was issued and therefore, in the light of the above stated decision of a Co-ordinate Bench of this Court, this petition does not appear to be maintainable. However, I would like to mention here that the facts of the complaint case appear to have constituted a civil dispute because civil remedy was available to the complainant but he filed complaint case.

In view of the aforesaid facts and circumstances, this anticipatory bail petition stands disposed of with direction to the petitioner to surrender before the court below within six weeks from the date of receipt/production of a copy of this order and if petitioner does so and seeks regular bail, the court below shall pass appropriate order on regular bail petition of the petitioner on



the day of his surrender, particularly, keeping in mind the observations made by this Court in this order.

(Hemant Kumar Srivastava, J)

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