

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.16025 of 2017

Arising Out of PS.Case No. -4519 Year- 2013 Thana -PATNA COMPLAINT CASE District-
PATNA

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Nawal Kishore Kumar Gupta, Son of Sita Ram Sah, Resident of Village-
Gogari, Jamalpur, Near Residence of Sub-Divisional Officer, Police
Station- Gogari, Jamalpur, District- Khagaria.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Priya Ranjan, Son of Sri Sheodhari Prasad Mehta, Resident of Mohalla-
Munnachak, Main Road, Kankarbagh, P.S.- Patrakar Nagar, District-
Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar, Advocate.
For the opposite Party No.2: Dr. Kumar Binode Bariar, Advocate.
For the State : Smt. Shaheen Begam, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA
ORAL ORDER

2 05-05-2017 Heard learned counsel for the petitioner and the State.

The petitioner apprehends his arrest in Complaint
Case No. 4519(C) of 2013 instituted for the offence under Section
406, 420 and 504 of the Indian Penal Code.

As per complaint petition the petitioner has taken
Rs.4,30,000/- from the complainant on 29.1.2013 in presence of
the witnesses and assured the complainant that the amount will be
returned till 28.10.2013, but the amount was never returned to the
Complainant. It is alleged that the aforesaid amount was taken by
the petitioner with dishonest intention from the complainant after
giving false assurance.



The court below after recording Solemn Affirmation and statement of witnesses, found *prima facie* case against the petitioner for the offence under Section 406 of the Indian Penal Code by order dated 10.6.2014. Thereafter, the petitioner did not appear after issuance of summons. Process under Section 82 Cr. P.C. has already been issued against the petitioner on 27.5.2016.

Learned counsel for the petitioner has relied on a decision reported in **(2010) 1 SCC page 684 (Ravindra Saxena Vrs. State of Rajasthan)** and argued that anticipatory bail can be granted at any time so long the applicant has not been arrested. In the case relied upon by the petitioner, the Complainant had already filed Suit for specific performance.

Learned counsel for the opposite party No. 2 has submitted that now the petitioner has been declared as absconder in terms of Section 82 Cr. P.C. and, as such, he is not entitled to be released on anticipatory bail. In support of which he placed a decision reported in **(2014) 2 SCC page 171 (State of Madhya Pradesh Vrs. Pradeep Sharma)**.

The Hon'ble Supreme Court has observed in aforesaid Judgment that "if anyone is declared as an absconder/proclaimed offender, in terms of Section 82 Cr. P.C., he is not entitled to relief of anticipatory bail."



In such circumstances, prayer for anticipatory bail of petitioner is rejected.

Since Process under Section 82 Cr. P.C. has been issued, petitioner may surrender before the court below and make prayer for regular bail which shall be considered by the court below in accordance with law without being prejudiced by this order.

(Sanjay Priya, J)

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