

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.10284 of 2016

Arising Out of PS.Case No. -24327 Year- 2014 Thana -PATNA COMPLAINT CASE District-
PATNA

=====

Sheo Chandra Singh son of Late Munna Singh, resident of House No.1101, Indira Nagar, West Boring Canal Road, P.S.- Patliputra, District- Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Sunil Kumar Mishra son of Late Kamal Narayan Mishra, Residing at Flat No.209, Shila Residency, Bishundeo Path, East Boring Canal Road, P.S.- Budha Colony, District- Patna.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Pritish Kumar Lal, Advocate

For the State : Mr. Ram Chandra Singh, APP

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 16-01-2018

This application under Section 482 of the Code of Criminal Procedure (for short 'the Cr.P.C.') has been filed by the petitioner for quashing the order dated 07.01.2016 passed by the learned Additional Sessions Judge-XI, Patna in A.B.A. No.3090 of 2015 in relation to Complaint Case No.24327C of 2014 by which the anticipatory bail application of opposite party no.2 was disposed of in the following terms:-

“Perused the record. From perusal of the case record it appears that the transaction between the complainant and this petitioner is admitted. In this regard petitioner has produced a chart in respect of receiving the money and according to



the said chart Rs.2,17,000/- is due against the petitioner and he is ready to pay the same. Considering the above facts and circumstances of the case the petitioner is directed to pay the due money i.e. Rs.2,17,000/- to the complainant and thereafter the court below may grant regular bail to the accused petitioner. Accordingly this anticipatory bail petition is hereby disposed of.”

(emphasis mine)

2. It is conceded by Mr. S.K.Lal, learned counsel for the petitioner that the petitioner had filed Complaint Case No. 24327C of 2014 in the court of Chief Judicial Magistrate, Patna arraying the opposite party no.2 as sole accused for the offences punishable under Sections 406 and 420 of the Indian Penal Code (for short ‘the I.P.C.’) and Section 138 of the Negotiable Instruments Act alleging therein that there was friendly relationship between the petitioner and opposite party no.2, who works as a contractor in the Irrigation Department and P.H.E.D. Department since last several years and as the contract work was moving at low pace, the opposite party no.2 had requested the petitioner many a times for financial help and ultimately on account of friendly relationship with opposite party no.2, he agreed to render financial help to him and extended him financial help in between 2007 to February, 2013. The opposite party



no.2 paid him back some amount on certain occasions and ultimately accounting of transactions between them took place in May, 2013 wherein it was found that the opposite party no.2 had to pay a sum of rupees thirteen lacs to the petitioner and for part payment of the same, opposite party no.2 gave eight post dated cheques for rupees eight lacs and promised to pay the balance amount of rupees five lacs shortly thereafter. The further case of the petitioner is that while he deposited three cheques drawn on the Canara Bank in his bank account with State Bank of India, S.K.Puri Branch, the opposite party no.2 promised him to pay the amount under those three cheques in cash shortly. Thereafter, the petitioner took back those cheques from his bank, but the opposite party no.2 failed to keep up his promise and with fraudulent acts got the period for presentation lapsed. The petitioner presented remaining five cheques for clearance which were also dishonoured for which he sent notice to opposite party no.2 on 02.12.2013 intimating dishonour of cheques as well as calling upon him for payment of the amount, but he failed to pay the amount of cheques and hence, a complaint case was instituted.

3. He submitted that after enquiry the learned Magistrate took cognizance of the offences punishable under Section 406 of the I.P.C. and Section 138 of the Negotiable Instruments Act and summoned the opposite party no.2 whereafter the opposite party no.2



moved an application for grant of pre-arrest bail in which the learned Additional Sessions Judge-XI, Patna while disposing of the application passed the aforesaid order dated 07.01.2016 without application of judicial mind accepting the statement made by the opposite party no.2 to be ex facie true directed him to pay the due money amounting to Rs.2,17,000/-. He contended that in view of the order passed by the learned Additional Sessions Judge-XI, Patna, the opposite party no.2 deposited rupees two lacs seventeen thousand by way of demand draft before the Court of Magistrate and surrendered seeking bail which petition was allowed by the learned Magistrate because of the observations made in the anticipatory bail application. According to him, the order impugned is bad in law as the opposite party no.2 had a liability to pay rupees thirteen lacs to the petitioner.

4. Mr. Kumar Dhirendra Pratap Singh, learned counsel appearing for the opposite party no.2 submitted that in the garb of the present application, the petitioner intends cancellation of bail granted to the opposite party no.2 by the Court of Magistrate. He submitted that the learned Additional Sessions Judge-XI, Patna while passing the order did not determine the liability against the opposite party no.2. He simply considered the submissions advanced on behalf of the opposite party no.2 in course of arguments in respect of his application made under Section 438 of the Cr.P.C. and directed the



opposite party no.2 to surrender and seek bail after depositing the amount admitted by the opposite party no.2 as liability due against him. He further contended that by the aforesaid order the learned Additional Sessions Judge-XI, Patna did not even grant bail to opposite party no.2 rather he left it open to the learned Magistrate either to grant or to refuse bail in case rupees two lacs seventeen thousand is deposited by opposite party no.2.

5. I have heard learned counsel for the parties and perused the record.

6. In the opinion of this Court, the order impugned dated 07.01.2016 does not require any interference by this Court. By the order impugned, the prayer of the opposite party no.2 for grant of pre-arrest bail was not even allowed. The order clearly shows that the learned Additional Sessions Judge-XI, Patna has left the discretion open to the Magistrate to grant or to refuse bail to the opposite party no.2 in case he surrenders after depositing rupees two lacs seventeen thousand. Learned counsel appearing for the opposite party no.2 has rightly submitted that in the garb of present application, the petitioner intends cancellation of bail of opposite party no.2.

7. Even otherwise, as the case arises out of a complaint in which cognizance has been taken for the offences punishable under Section 406 of the I.P.C. and Section 138 of the N.I.Act, no fault can



be found with the order passed by the learned Magistrate whereby he has granted bail to the petitioner.

8. Accordingly, the application, being devoid of any merit, is dismissed.

9. Before I part with the order, I must record that any observation made by the learned Additional Sessions Judge-XI, Patna in his order dated 07.01.2016 passed in A.B.A. No.3090 of 2015 shall have no bearing on the merits of the case in course of trial.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	
Transmission Date	

