

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43450 of 2018

Arising Out of PS. Case No.-1 Year-2018 Thana- CHAPRA TOWN District- Saran

Rakesh Gupta, Son of Late Ramagya Prasad Gupta, inhabitant and Partner of the firm, Shilpi Palace, Situated at Mohalla- Salempur, Chhapra, police Station- Chhapra Town, District- Siwan.

... .. Petitioner/s

Versus

1.The State of Bihar.
2, Rajkumar Singh, son of Nageshwar Singh, Resident of Mauna Chapra, Police Station Chapra Town, District Saran

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Rakesh Kumar Sinha
For the Opposite Party/s : Mr. Sri Mukeshwar Dayal

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY
ORAL ORDER

5 11-12-2018 Heard learned counsel for the petitioner, learned counsel appearing for the State and learned counsel for the informant.

The petitioner apprehends his arrest in connection with Chhapra Town PS Case No. 01 of 2018 for the offence under Sections 406 and 420 of the Indian Penal Code and 138 of Negotiable Instruments Act.

Learned counsel appearing for the petitioner would submit that allegation against the petitioner is that an undertaking reached between the parties and the petitioner in connection with agreement has misappropriated Rs.80 lacs of the informant. Learned counsel for the petitioner submits that in



the matter of breach of agreement there is civil dispute for which criminal case is only designed to exert pressure. Referring to the allegation he submits that the informant has admitted that Rs.39 lacs was received by the informant and the instant case was lodged on account of the business transaction and there is dispute as to accounting which cannot be a ground to proceed under the provisions of the Indian Penal Code.

Learned counsel for the petitioner further submits that at the highest a case under Section 138 of the Negotiable Instruments Act is made out and not under Sections 406 and 420 of the Indian Penal Code.

Learned counsel for the informant submits that the petitioner has misappropriated Rs.41 lacs and as such this Court may direct the petitioner to refund that amount. The issue of accounting and settlement of the dispute on account of commercial or business transaction cannot be examined while considering the application for grant of bail.

Having regard to the fact that the petitioner has no criminal antecedent and also considering the totality of the fact situation that primarily the case relates to business transaction for which remedy is available before the competent civil court the Court is inclined to grant bail to the petitioner.



Considering the aforesaid, the petitioner named above, in the event of arrest or surrender before the court below within one month from today, is directed to be released on bail on furnishing bail bonds of Rs.10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Chhapra in connection with Chhapra Town PS Case No. 01 of 2018 subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

However, grant of bail to the petitioner will not cause any prejudice to the informant in settling the dispute and recovery of the amount which is allegedly due and payable by the petitioner to the informant.

(Anil Kumar Upadhyay, J)

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