

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.53175 of 2018

Arising Out of PS. Case No.-226 Year-2014 Thana- PATRAKARNAGAR District- Patna

Abhishek Kumar @ Abhishek Kumar Mishra, Son of Sushil Kumar Chaudhary, Resident of Village- Karjapatti, Police Station- Kamtaul, District- Darbhanga.

... .. Petitioner.

Versus

The State of Bihar.

... .. Opposite Party.

Appearance :

For the Petitioner : Mr. Mukund Mohan Jha, Advocate.
For the State : Mr. Kumar Virendra Narayan, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJENDRA KUMAR MISHRA

ORAL ORDER

2 19-09-2018 Heard learned counsel for the petitioner and the learned A.P.P. for the State.

The petitioner apprehends his arrest in connection with Patrakar Nagar Police Station Case No.226 of 2014 registered under Sections 406 and 420 of the Indian Penal Code, pending in the court of the Additional Chief Judicial Magistrate-X, Civil Court, Patna.

Learned counsel appearing on behalf of the petitioner submits that during the investigation, the prayer of the petitioner for his pre-arrest bail was rejected by this Court vide order dated 04.02.2016 passed in Criminal Misc. No.47187 of 2015, taking into consideration the nature of allegation as made against him in the F.I.R. Thereafter, the petitioner preferred Special Leave



Petition bearing Petition(s) for Special Leave to Appeal (Crl,) No(s). 1587 of 2016, which was also dismissed by the Hon'ble Apex Court vide order dated 04.03.2016 with an observation that if the petitioner surrenders within the next two weeks the time fixed by High Court which has expired will not stand in the way of grant of bail to the petitioner, if he is found to be so entitled. Thereafter, the Investigating Officer submitted the final form on 17.03.2017, on investigation, finding the case of civil nature, but the cognizance taking court differing with the final form submitted by the Investigating Officer, after perusing the materials, available in the case diary, took the cognizance of the offence against the petitioner under Sections 406 and 420 of the Indian Penal Code vide order dated 25.05.2017. Further submission is that since the Investigating Officer submitted the final form against the petitioner, finding the case of civil nature, hence, the circumstance, has, now, changed and the petitioner has filed this application under Section 438 of the Code of Criminal Procedure.

Admittedly, the prayer of the petitioner for his pre-arrest bail was rejected by this Court and also by the Hon'ble Apex Court. Thereafter, while the final form was submitted by the Investigating Officer on 17.03.2017 against the petitioner,



finding the allegation civil of nature but the cognizance taking court differing with the final form submitted by the Investigating Officer, took the cognizance of the offence against the petitioner under Sections 406 and 420 of the Indian Penal Code, on perusal of the materials, available in the case diary. As such, I find no reason to entertain this application filed on behalf of the petitioner under Section 438 of the Code of Criminal Procedure.

Accordingly, this application stands rejected.

(Rajendra Kumar Mishra, J)

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