IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.55681 of 2017

Arising Out of PS. Case No.-2236 Year-2009 Thana- PATNA COMPLAINT CASE District-Patna

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Jai Mangal Thakur Son of Late Nagina Thakur Resident of Village-Saraiya Kothi, P.S. Sariya Kothi, Distt. Muzaffarpur

... ... Petitioner/s

Versus

1.The State of Bihar
2. M/S National Small Industries Corporation Ltd. (A Govt of India Enterprises) Maurya lok complex shop no. 142/143, P.S.Kotwali Dist. Patna, represented through its Deputy Manager- cum -authorized representation Mr. Rakesh Kesharwani son of late Ram Das Kesharwani NSIC Patna.

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr. Rabindra Prasad Singh
For the Opposite Party/s : Mr. Shyam Bihari Singh

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL ORDER

5 06-02-2018 Heard learned counsel for the petitioner and learned APP for the State.

Petitioner apprehends his arrest in complaint case no. 2236(c) of 2009 instituted for the offence under Section(s) 138 of the Negotiable Instruments Act and Section 406 of the Indian Penal Code.

The allegation in the complaint is that the petitioner has taken a loan of Rs. 3,31,290/-(Rs. three lakhs thirty one thousand two hundred and ninety only) from M/s National Small Industries Corporation Ltd (A Govt. of India Enterprise) for purchase of machinery. Petitioner is the sole proprietor of the firm, namely Ganpati Laghu Udyog. The petitioner had taken the machinery and working capital loan total amounting to Rs. 3,31, 290/- from the complainant under the term loan scheme in the year 2005 and for this an agreement dated 28.7.2005 was also made in this regard between the complainant corporation and the petitioner's firm. As per the term of the agreement, the petitioner has to pay the entire loan along with interest and other charges in 20 quarterly installments of Rs. 19, 659.00 (Rs nineteen thousand six hundred and fifty nine only) each and thus issued twenty post dated cheques with undertaking that the borrower will make appropriate arrangement for encashment of the said post dated cheque(s) on presentation to its Banker on due date of every installment(s). But the cheque in- question, when presented by the complainant for encashment on due date, the same was returned with endorsement 'account closed/ transferred to'.

Learned counsel for the petitioner has submitted that petitioner is ready to deposit the amount of the cheque of the instant case which got bounced.

Learned counsel for the complainant-opposite party no.2 has appeared and submitted that all the cheques are being bounced and this petitioner is merely causing harassment to the complainant. The complainant has filed eleven different cases against the petitioner for bouncing of cheque(s) and in each case cheque(s) issued by this petitioner against the liability of the loan, on presentation, is being returned by the Bank with endorsement that account has been closed. It is admitted position that in terms of the agreement which was entered into between the petitioner and the complainant on 28.7.2005 which bear the signature of the complainant and the petitioner, the petitioner has agreed that the entire loan amount along with interest and other charges will be returned in 20 quarterly installments of Rs. 19, 659.00/- and when the cheque(s) were presented, it was found that petitioner had closed the account and cheque got returned. This is totally cheating by the petitioner.

Therefore, this Court is not inclined to grant anticipatory bail to the petitioner. Prayer for anticipatory bail of the petitioner stands rejected.

Petitioner may surrender before the Court below and make prayer for regular bail which shall be considered and disposed of on its own merit in accordance with law without being prejudiced by the present order in the event the petitioner agrees at the time of surrender to pay the loan amount to the complainant.

(Sanjay Priya, J)

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