

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.43848 of 2018

Arising Out of PS. Case No.-96 Year-2018 Thana- AURANGABAD COMPLAINT CASE
District- Aurangabad

=====

Jai Praksh Giri, Son of Ram Pravesh Giri, Resident of Village- Raval Bigha,
P.S.- Aurangabad (Town) District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Sunil Kuamr Sharma, Son of Nand Kumar Sharma, Resident of Village-
Shrkrishna Nagar, P.S.- Aurangabad (Town) Dist- Aurangabad.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s	:	Mr. Binod Kumar Pandey
For the Opposite Party/s	:	Mr. Sunil Kumar Pandey
For the Complainant	:	Ms. Vagisha Pragya Vacakaknavi
		Mr. Manu Tripurari
		Mr. Rajeev Ranjan

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

3 28-09-2018 Heard learned counsel for the petitioner and learned
APP for the State.

The petitioner is apprehending his arrest in a case registered for the offences punishable under Sections 406, 420, 504, 506 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act.

According to complaint petition, the complainant had advanced Rupees Six Lacs and odd in cash to the petitioner, which the petitioner did not refund.

Submission is that there is no proof of payment of such huge amount. Moreover, each and every non-refund of



money does not attract the ingredient of dishonest intention at the time of entering into transaction. Further submission is that complainant has filed a number of complaint petitions relating to same grievance and the petitioner has been allowed anticipatory bail in those complaint petitions.

Learned counsel for the complainant opposed the prayer for anticipatory bail on the ground that since process under Section 82 of the Criminal Procedure Code has already been issued against the petitioner, the prayer for anticipatory bail is not maintainable in view of the judgment of the *Hon'ble Apex Court in State of Madhya Pradesh versus Pradeep Sharma reported in (2014) 2 SCC 171*.

The record reveals that when the service of summons was alleged to be effected the petitioner had already moved the learned Sessions Judge, Aurangabad for anticipatory bail in A.B.P. No.498 of 2018. The court below on the basis of web track came to the conclusion that summons through registered notice against the petitioner has already been served. The aforesaid was recorded in the order dated 01.05.2018 and the prayer for anticipatory bail of the petitioner was refused by the learned Sessions Judge, Aurangabad on 08.06.2018. Thereafter, the petitioner moved this Court on 19.07.2018



against the refusal of prayer for anticipatory bail and the court below issued show cause notice against the S.H.O. Muffasil Police Station for non-execution of non-bailable warrant of arrest issued against the petitioner. In response to the show cause notice dated 20.06.2018, the Police immediately reported that the petitioner is evading service of non-bailable warrant of arrest. In the circumstances process under Section 82 of the Criminal Procedure Code was issued.

The record apparently reveals a perfunctory and collusive report submitted by the Police and the petitioner was bona fide availing statutory right of anticipatory bail before different forum during the aforesaid period. The petitioner could not have been compelled to appear before the Magistrate in pursuance of summons issued against the petitioner when the petitioner had statutory right to seek for anticipatory bail from the competent Court. Therefore, in my view, the aforesaid judgment cannot come in the way for consideration of prayer of the petitioner for grant of anticipatory bail especially in view of the fact that there is no material on the record to give to the Court-below reason to believe that the petitioner was absconding or concealing himself so that the warrant of arrest cannot be executed.



Considering the merit of the case, as discussed above, let the petitioner, above named, in the event of his arrest or surrender before the court below within a period of thirty days from the date of receipt of the order be released on bail on furnishing bail bond of Rs.20,000/- (Rupees Twenty Thousand) with two sureties of the like amount each to the satisfaction of learned court below where the case is pending in connection with Complaint Case No.96 of 2018, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure as well as condition that the petitioner shall fully co-operate with the investigation/trial of the case, failing which the court below shall be at liberty to cancel the bail bond of the petitioner.

(Birendra Kumar, J)

abhishek/-

U		T	
---	--	---	--

