

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.37680 of 2018

Arising Out of PS.Case No. -172 Year- 2016 Thana -EAST CHAMPARAN COMPLAINT District-
EASTCHAMPARAN (MOTIHARI)

=====

1. Shashi Ranjan Pathak, Son of Kamla Pathak @ Kamla Kant Pathak,
Resident of Village- Dumariya, Police Station- Dumariyaghat, District- East
Champaran.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Umesh Rai, S/o Sri Satyanarayan Rai, R/o Village- Jai Singh Pur,
Chiutahi, Police Station- Turkaulia, District- East Champaran.

.... Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Dhurendra Kumar, Adv

For the Opposite Party/s : Smt. Indu Kumari Srivastava, APP

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

3 28-09-2018 Heard learned counsel for the petitioner and
learned Additional Public Prosecutor for the State.

The petitioner is apprehending his arrest in a
case registered for the offences punishable under Sections
420,323,504/34 of the Indian Penal Code.

According to case of the complainant,
complainant had purchased tractor of the petitioner on
payment of Rs.2,50,000/-. Subsequently, the complainant
found that the papers of the tractor were not genuine.
Hence, complainant offered to annul the transaction. As
part performance, the complainant returned the tractor to
the petitioner but the petitioner did not return back the



cash and the cheque of refund issued by the petitioner allegedly bounced.

Submission of the learned counsel for the petitioner is that it was duty of the complainant also to verify the genuineness of the paper of the tractor first and thereafter to make the payment. Moreover, from the act of the petitioner in issuing refund cheque, it cannot be alleged that at the time of inception of the contract, the petitioner had dishonest intention. Hence, prima facie offence under Section 420 of the I.P.C. is not made out at least for the purpose of consideration of prayer for anticipatory bail. Learned court below has not taken cognizance for the offence under Section 138 of N.I. Act.

Learned counsel for the complainant opposed the prayer for anticipatory bail on the ground that process under Section 82 Cr.P.C. has already been issued against the petitioner. Hence, at this stage, this Court should not entertain prayer for anticipatory bail.

Finding substance in the submission of learned counsel for the petitioner that prima facie no offence is made out against the petitioner, 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 (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 Trial No.4331 of 2015 arising out of Complaint Case No. C-172 of 2016, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and further the petitioner shall fully cooperate 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)

Nitesh/-

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

