

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1314 of 2016

Arising Out of COMPLAINT CASE No.-1426 Year-2012 District- Patna

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Prem Mohan Singh son of Late Dr. Nageshwar Prasad Sinha, Resident of 12 Panchwati Apartment, Punaichak, Police Station- Shastringar, District- Patna.

... .. Petitioner

Versus

1. The Union Of India
2. The State of Bihar through the Director General of Police, Bihar, Patna.
3. The Senior Superintendent of Police, Patna, Bihar.
4. The Station House Officer S.H.O., Shastringar Police Station, District- Patna, Bihar.
5. Rana Rajesh Kumar Son of Not known
6. Sanjeev Kumar Sinha, son of Not known,
Both Director of M/s Vaishali Kisan Uday Sugar Mills Pvt. Ltd. resident of 202, Parvati Apartment, West Lohanipur, Police Station- Kadamkuan, District- Patna.
7. Raju Singh Son of not known, authorised Signatory of M/s Vaishali Kisan Uday Sugar Mills Pvt. Ltd.
Resident of 202, Parvati Apartment, West Lohanipur, Police Station Kadamkuan, District- Patna.
8. General Manager, Allahabad Bank, Zonal Office, Patna, Bihar.

... .. Respondents

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Appearance :

For the Petitioner : None
For the Respondent-State: Mr.Nishi Nath Ojha

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 02-07-2019

No one appears for the petitioner. Learned counsel for the Union of India, learned counsel for the State and learned counsel for respondent-Allahabad Bank are present.

2. This application has been filed by the petitioner for directing respondent nos. 2 to 4 to arrest respondent nos. 5 to 7 in complaint case filed by the petitioner vide Complaint



Case No. 1426-C of 2012 under Sections 406, 420 and 120 B of the Indian Penal Code and Section 138 of the Negotiable Instruments Act.

3. In the writ petition, it has been pleaded that respondent nos. 5 to 7 have been made accused in Complaint Case No. 1426-C of 2012 in which cognizance has been taken under Section 138 of the Negotiable Instruments Act. They filed an application for grant of anticipatory bail on 20.08.2014. On 22.08.2014, the learned Sessions Judge, Patna issued notices to the petitioner and directed that no coercive steps be taken against respondent nos. 5 to 7. On 27.10.2014, the petitioner entered into appearance by filing vakalatnama. On contest, vide order dated 22.04.2016, the order passed by the learned Session Judge directing that no coercive steps be taken against respondent nos. 5 to 7 was withdrawn and, ultimately, vide order dated 09.09.2016, the anticipatory bail application was rejected. From perusal of the order dated 09.09.2016, it would appear that the jurisdictional Magistrate had taken cognizance of the offences under Section 406 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act.



4. After the aforesaid order dated 09.09.2016 was passed the instant case has been filed on 21.12.2016 for directing respondent nos. 2 to 4 to arrest respondent nos. 5 to 7.

5. In the opinion of this court, no such direction can be given by this Court only because the anticipatory bail application has been rejected by the sessions court. The rejection of an application under Section 438 of the Criminal Procedure Code (for short 'CrPC') would not make a person liable for arrest. It is always open to an accused to appear before the court, in a complaint case, pursuant to summon or warrant issued against him and pray for bail. On appearance, in a case under Section 406 of the Indian Penal Code and Section 138 of the Negotiable Instruments Act, the Magistrate exercising the power under Section 437 of the CrPC can grant him bail.

6. In a complaint case, whether the arrest of an accused is required or not would depend on the facts and circumstances of the case. It lies within the discretion of the court concerned to grant or refuse bail in case an accused appears before it or is produced by the police pursuant to warrant issued by the court.

7. Considering the facts and circumstances of the case, only because the anticipatory bail application of the accused



has been rejected, the prayer of the petitioner to direct respondent nos. 2 to 4 to arrest respondent nos. 5 to 7 cannot be allowed.

8. The application, being devoid of any merit, is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.07.2019
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