

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.29244 of 2019

Arising Out of PS. Case No.-3594 Year-2017 Thana- PATNA COMPLAINT CASE District-
Patna

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Vikash Vaibhav Son of Anjani Kumar Singh Resident of Village - Hawraha
Hasanpur, P.O.- Hasanpur, P.S.- Mahnar, District - Vaishali and Presently
Resident of - Indrapuri, Road No.-6, House No.- 6/102, P.O.- Keshari Nagar,
P.S.- Patliputra, District and Town - Patna (Bihar)

... .. Petitioner

Versus

1. The State Of Bihar
2. Prabhat Kumar Singh Son of Late Baijnath Singh Resident of Mohalla -
Rajiv Nagar, Road No. 14/ A, C/O - Sri Manoranjan Prasad Singh, P.O.-
Kesri Nagar, P.S.- Rajiv Nagar, District - Patna

... .. Opposite Parties

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Appearance :

For the Petitioner/s : Mr.Shantanu Kumar
For the Opposite Party/s : Mr.Umeshanand Pandit

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

ORAL ORDER

7 16-11-2019 Heard learned counsel for the petitioner, learned
counsel for opposite party no. 2 as well as learned Additional
Public Prosecutor for the State.

Petitioner apprehends his arrest in connection with
Complaint Case No. 3594(C) of 2017 in which cognizance has
been taken under Sections 406, 420 of the Indian Penal Code
and Section 138 of N.I. Act.

The accusation against the petitioner is that he took
rupees twelve lacs on 12.01.2017 from the opposite party no. 2
(complainant) and subsequently, on 27.06.2017 he gave cheque



no. 000014 of rupees twelve lacs to opposite party no. 2 but when the aforesaid cheque was presented before the concerned Bank, the said cheque became bounced.

Learned counsel appearing for the petitioner submits that according to complaint case itself, the complainant gave rupees twelve lacs to petitioner on 12.01.2017 and it is well known fact that prior to January, 2017, demonetization had already been taken place and any person could have withdrawn limited cash from the Bank. He further submits that as a matter of fact, the opposite party no. 2 happens to be relative (own *Fufa*) of the petitioner and there was matrimonial dispute between opposite party no. 2 as well as his wife, who happens to be *Fua* of the petitioner. He further submits that the some cheques of the petitioner were found missing for which the petitioner gave information to concerned Bank on 22.06.2017.

On the other hand, learned counsel appearing for opposite party no. 2, vehemently, opposed the prayer submitting that this anticipatory bail petition is not maintainable as the process under Section 82 of the Cr.P.C. against the petitioner has already been issued vide order dated 26.10.2018 and a co-ordinate Bench of this court in a judgment reported in 2017(4) PLJR 576 has already laid down that after issuance of process



under Sections 82 and 83 of the Cr.P.C., petition under Section 438 of the Cr.P.C. is not maintainable. He also submitted that no doubt, one petition is said to have given by the petitioner to concerned Bank informing about the missing of the cheques but Annexure-3 to the petition goes to show that the Bank took note of the aforesaid petition on 29.08.2018 i.e. after filing of the complaint case and, therefore, the aforesaid fact goes to show that the petitioner got manufactured the aforesaid petition with the help of Bank officials.

No doubt, a co-ordinate Bench of this court has held in the decision reported in 2017(4) PLJR 576 that after issuance of process under Sections 82 and 83 of the Cr.P.C., petition under Section 438 of the Cr.P.C. is not maintainable but the aforesaid observation of co-ordinate Bench of this court came in the situation when the petitioner of that case approached the court after issuance of process under Sections 82 and 83 of the Cr.P.C. Here, in the present case, admittedly, the petitioner approached the Sessions Judge prior to issuance of process under Sections 82 and 83 of the Cr.P.C. and, therefore, in my view, the decision cited on behalf of opposite party no. 2 is not applicable in the fact of the present case

Considering the aforesaid facts and circumstances as



well as merit of the present case, I think it proper to extend the privilege of anticipatory bail to petitioner. Accordingly, this anticipatory bail petition is allowed and it is ordered that petitioner, in the event of his arrest/ surrender within four weeks from the date of receipt of this order to the court concerned, shall be released on bail on furnishing bail bonds of Rs 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate-III, Patna in Complaint Case No. 3594(C) of 2017, subject to conditions as laid down under Section 438(2) of the Cr.P.C.

(Hemant Kumar Srivastava, J)

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