

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28662 of 2019

Arising Out of PS. Case No.-105 Year-2019 Thana- NAWADAH COMPLAINT CASE
District- Nawada

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Ritesh Kumar Agrawal @ Ritesh Kumar, Son of Late Nand Lal Agrawal,
Resident of Purani Bazar, Sabjibazar, P.S., Town and District-Nawadah

... .. Petitioner/s

Versus

1. The Sate Of Bihar
2. Gopal Prasad Son of Late Jagdish Prasad Gupta Resident of Mohalla-
Sonarpatti Road, At P.O. P.S.-Nawadah, District-Nawadah

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Alok Kumar Agrawal

For the Opposite Party/s : Mr.Anand Mohan Prasad Mehta

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

7 08-08-2019 Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

Petitioner apprehends his arrest in connection with
Complaint Case No.105 of 2019 for the offence punishable
under Sections 406, 420, 504 of the Indian Penal Code and
Section 138 of Negotiable Instrument Act.

The allegation against the petitioner as per the
complaint is that petitioner is wholesale and retail Cloth
Merchant and runs business in the name of Sagarmal & Sons,
Raymonds Show Room, Balajee Enterprises, Manjushree and
other business of Hallmark Jewellery show room had taken a
loan of Rs.80,25,000/- from the complainant and his brother



Satyam Rupesh for which the brother of the complainant had filed Complaint Case bearing No.1667 of 2013, 1668 of 2013 and 1669 of 2013 in the Court of Chief Judicial Magistrate, Nawada. It has further been alleged that aforesaid complaint was compromised between the petitioner and the complainant and the petitioner agreed to pay the said amount in installment. It has further been alleged that the petitioner issued six cheques of Rs. 75,000/- each having a total amount 4,50,000/- which was presented by the complaint in his ICIC bank account and the same was dishonored due to insufficient fund.

Mr. Ramakant Sharma, assisted by Mr. Alok Aggrawal, learned senior counsel for the petitioner submits that petitioner has falsely been implicated in this case inasmuch as from perusal of the compromise arrived at between the parties which is Annexure-5 to this petition, it would be evident that matter relates to previous three complaint lodged by the complainant and his brother and as per the terms of the compromise, it would be evident that though the parties have agreed that no amount was required to be paid by the petitioner to the complainant and in para 5, it has been mentioned that no amount is due from the petitioner and everything has been settled now. Learned counsel further submits that cheques



which are the subject matter of this complaint were stolen from the Fast Food counter while the petitioner had visited the market for which the petitioner has lodged complaint before the police vide Annexure-2 to this application. Learned senior counsel further submits that by Annexure '3' the bank was also informed about the loss of these cheques in 2013 and a request was made to freeze the account and accordingly it was frozen. Learned senior counsel appearing for the petitioner also submits that all these stolen cheques, which were produced by the complainant before the bank, has subsequently dishonored and the present case has been lodged against the petitioner under Section 131 of NI Act. Learned senior counsel thus submits that on perusal of entire complaint, it is evident that at best there is the allegation is that a loan was given to the petitioner by the complainant which was not paid and further the cheque issued by the petitioner has bounced and accordingly at best a case under Section 138 of NI Act is made out which is bailable and there is no ingredient of Section 406 and 420 of IPC.

On the other hand, Mr. Sandeep Kumar, learned counsel appearing for the complainant, assisted by Mr. Deepak Kumar, submits that the petitioner is habitual offender inasmuch as altogether 15 cases have been lodged against the petitioner



and the petitioner has mentioned only seven cases in paragraph 3 and eight cases have been concealed by the petitioner which amounts to suppression of facts. Learned counsel further submits that in this case also, the Court of A.C.J.M., Nawada has issued process under Section 82 dated 02.08.2019 as such in view of Supreme Court judgment reported in **(2012) 8 SCC 730**, the anticipatory bail application is not maintainable.

In reply learned counsel appearing for the petitioner, Mr. Alok Aggrawal, submits the cases which were filed against petitioner all of them have been filed by the complainant and further in his rejoinder, complainant has stated in paragraph 17 that out of eight cases, seven cases have been filed by the complainant and his brother except Complaint Case No.101 of 2013 and the same could not be stated in para 3 due to inadvertence.

After having heard learned counsel for the petitioner as well as learned counsel appearing on behalf of the State and taking into consideration the fact that there appears to be civil dispute between the parties relating to money transaction between them and fuhrer upon perusal of the complaint case at best prima facie offence under Section 138 of NI Act is made out and that petitioner is not involved in a heinous crime



requiring custodial interrogation of the petitioner, as such, I am inclined to grant anticipatory bail to the petitioner.

Accordingly, the petitioner, above named, is directed to surrender before the learned Court below within a period of four weeks from today and in the event of surrender by him, he shall be released on anticipatory bail by the Court below upon furnishing bail bond of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional Chief Judicial Magistrate, VIth, Nawada, subject to the condition as mentioned under Section 438 (2) of Cr.P.C.

(Anil Kumar Sinha, J)

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