IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48587 of 2018

Arising Out of PS. Case No.-4056 Year-2013 Thana- PATNA COMPLAINT CASE District- Patna

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Nishant Kumar S/o Nitendra Narayan Singh, R/o Mohalla- Agarwa, Lala Tola, P.O. P.S.- Motihari Town, District- East Champaran.

... ... Petitioner/s

Versus

1. State Of Bihar
2. Anuja Kumari W/o Mukul Kumar , R/o Mohalla- Near Punam Gas Godown, Shanti Vihar, Ambedkar Path, P.O. - B.V. College, P.S.- Shastri Nagar, Patna-800014.

... ... Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr.Ajay Kumar Thakur, Mr.Pravin Kumar, Advocates
For the complainant	:	Mr. Sunil Pathak, Adv
For the State	:	APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

3 12-03-2019 Heard learned counsel for the petitioner and learned APP for the State.

2. The petitioner apprehends his arrest for the offences alleged under Sections 406, 420 IPC registered in connection with Complaint Case No. 4056 of 2013.

3. It is submitted that the petitioner has been falsely implicated and the ingredients of Section 406 and 420 IPC are not fulfilled.

4. The prosecution story in brief is that the petitioner is the Proprietor of Enkay Securities who is said to have opened a Demat Account in the name of the complainant with S.K.P. Securities Pvt. Ltd. Kolkata of which he was the

franchisee. Owing to fall in market price, some loss on investment was suffered by the complainant and thereafter the Demat account with SKP Securities Pvt. Ltd. was closed and a new Demat account of the complainant was opened with i-Venture Investment Managers Ltd., New Delhi. On closing of transaction on 08.09.2012 there was a closing balance of Rs. 6,81,922/- in the Demat account which was asked to be refunded to the petitioner. The complainant promised to refund the amount with 100% profit after 31.03.2013. Thereafter, it was found that the petitioner had closed his office and shifted to Delhi where he was purchased a flat. On pursuing the matter, two cheques were issued in favour of the complainant on 10.06.2013, but the same was dishonoured on three occasions upon presentation, and despite legal notices, the petitioner has not made good the amount to the complainant.

5. It is submitted on behalf of the petitioner that the disputes between the parties relates to business commercial transaction and the ingredients of the offences alleged under Section 406 and 420 IPC are not made out. It is further pointed out that no case can be made out under Section 138 of the N.I. Act after the cheque had been dishonoured after presentation three times. The petitioner claims clean antecedents.

5. Learned counsel for the complainant appears and opposes the anticipatory bail petition submitting that the

petitioner with an intention to cheat the complainant had induced her to enter into an agreement on 01.09.2012 for retaining the complainant's funds with promise of higher return through commodity trading account. It is submitted that the petitioner entered into risky transactions with a view to earning high commission/brokerage and failed to repay the amount to the complainant upon demand, rather he closed his office and shifted to Delhi. All this clearly discloses the petitioner's clear intention right from the beginning to cheat the complainant.

6. Having regard to the nature of accusations and gravity of offence alleged, this Court is not inclined to grant the privilege of anticipatory bail to the petitioner. Bail petition stands dismissed.

(Vikash Jain, J)

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