

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.50265 of 2019

Arising Out of PS. Case No.-49 Year-2018 Thana- BHAGALPUR COMPLAINT CASE
District- Bhagalpur

Ashok Kumar @ Tuntun Sharma, aged about 40 years (Male), son of Fudo Sharma, R/o Village – Meerachak Ward No. 9, P.S. - Bihpur, District – Bhagalpur, at present residing near Bihpur Government Hospital, P.S. - Bihpur, District – Bhagalpur.

... .. Petitioner

Versus

1. The State of Bihar
2. Dharmbeer Kumar aged about 37 years (Male), son of Suresh Mandal, R/o Bihpur, P.S. - Bihpur, District – Bhagalpur.

... .. Opposite Party

Appearance :

For the Petitioner/s	:	Mr.Chandan Kumar Kashyap, Advocate
For the State	:	Md. Fahimuddin, A.P.P.
For the Opposite Party/s	:	Mr.Subhash Kumar Jha, Advocate Mr. Ranjan Kumar Jha, Advocate

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 25-10-2019 Heard learned counsel for the petitioner and
learned Additional Public Prosecutor for the State.

The petitioner is seeking anticipatory bail in connection with Complaint Case No. 49 of 2018 registered under Sections 420 of the Indian Penal Code and Section 138 of the Negotiable Instrument Act, pending in the court of learned A.C.J.M., Naugachia.

In this case while pressing the application for grant of anticipatory bail on 13.08.2019, a statement was made on behalf of the petitioner that the petitioner is



ready to return the money. On such submission, this court had been pleased to issue notice to opposite party no. 2. An interim protection was also granted to the petitioner, but today when the matter has been called out learned counsel for the petitioner on instruction submits that the petitioner would not be able to pay the amount in question.

On perusal of the impugned order it appears that the petitioner had issued cheque bearing no. 003466 dated 11.12.2017 for Rs. 2,20,000/- and another cheque bearing no. 003464 for Rs. 1,80,000/-. When the informant lodged cheque no. 003466 with his banker for encashment, the same was dishonoured for want of sufficient fund. It is submitted on behalf of the petitioner that the petitioner had lost the cheque book which was kept in a bag, in course of travelling at the railway station Bihpur and in this connection he had submitted an information to the Railway Police on 06.11.2017.

Learned counsel for the petitioner submits that on a reading of the complaint petition, it would appear



that the complainant alleged to have given this money on account of certain business transaction and as such in such transaction if the cheque stood dishonoured it cannot be said to be a case of cheating and as such the petitioner may be granted privilege of anticipatory bail.

Learned counsel for the complainant/opposite party no. 2 submits that once the petitioner has availed the interim protection from this court on giving an undertaking that he is ready to return the money and thereafter he is not abiding by his undertaking given before this court which is recorded in the order dated 13.08.2019, this court may take note of the conduct of the petitioner and the anticipatory bail application may be rejected on this ground.

Learned counsel further submits that it is not a case where the petitioner and the complainant were involved in business for a long time. It was the very first transaction in which on the assurance given by the petitioner, the informant had withdrawn a sum of Rs. 4 Lakhs from his account and had given it to the petitioner



and when the complainant found that the informant was not abiding by his representation given to the petitioner, the complainant demanded his money, thereupon the petitioner had issued two cheques. It is thus submitted that if in the very first transaction the petitioner has duped the complainant, the learned court below has rightly taken cognizance of the offences under Section 420 of the I.P.C. read with Section 138 of the N.I. Act and has decided to issue summons against the petitioner. Since the petitioner has not appeared pursuant to summons the learned court below had issued warrant of arrest against the petitioner.

Having heard learned counsel for the petitioner and learned counsel representing the complainant – opposite party no. 2, this Court is of the opinion that on the face of the materials where the petitioner has issued the cheque in question which stood dishonoured on presentation and thereafter he made a statement before this court saying that he would be ready to return the money and based on that statement this court granted protection to the petitioner, if at this stage petitioner has



turned around from his statement and undertaking given before this court, that would certainly be a matter to be taken note of. Even otherwise in the nature of allegations and the fact that the petitioner has not appeared pursuant to summons in the court below, this court would not be inclined to grant privilege of anticipatory bail to the petitioner.

The application is dismissed.

The interim protection granted to the petitioner stands withdrawn.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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