

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.82733 of 2019**

Arising Out of PS. Case No.-233 Year-2018 Thana- DARBHANGA TOWN District-
Darbhanga

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1. Kanchan Kishore @ Kachan Kishore Singh Son of Shri Awadhesh Singh Resident of Village - Chiraiyatand, Khas Mahal, Road No.3, P.S.- Jakkanpur, Distt.- Patna.
 2. Dhananjay Kumar @ Dhananjay Kumar Satyadeva Son of Shri Raghav Prasad Resident of Village - In front of Gopalganj Petroleum, Jangalia More, P.S.- Gopalganj, Distt.- Gopalganj.
 3. Pankaj Priyadarshi @ Pankaj Singh Son of Maheshwar Narayan Thakur Resident of Village - Maushari Ram ,P.S.- Sakra, Dist.- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Amir Alam, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 13-12-2019

Heard learned counsel for the petitioners and
learned APP for the State.

2. The petitioners seek pre-arrest bail in connection
with Darbhanga Town PS Case No. 233 of 2018 dated
18.11.2018 instituted under Sections 420/406/34 of the Indian
Penal Code and 138 of the Negotiable Instruments Act, 1881
(hereinafter referred to as the 'Act').

3. The allegation against the petitioners is that four
cheques issued by their Company were not honoured.



4. Learned counsel for the petitioners submitted that they are partners in Eklavya Infra Private Limited Company and the informant has alleged that he used to supply diesel to the Company for which money was not given. It was submitted that the allegation is that since last few months, payments were not regular and four cheques of various amounts totalling Rupees Twenty Three Lakhs were not honoured. It was submitted that once the informant has admitted that there was business dealing and initially he had no complain for recovery of any amount as part of business transactions, criminal case is an abuse of the process of the Court. It was submitted that in the FIR itself it is admitted that initially there was no complaint and later on the allegation is that four cheques were not encashed which also are said to have been issued for supply of diesel to the Company, it is apparent that dealing was purely business/contractual in nature. Learned counsel submitted that the law is settled, inasmuch as, an allegation under the Act for a charge under Section 138 of the same, FIR is not maintainable and only a complaint can be filed. It was further submitted that the matter, thus, is purely civil in nature and if at all the informant has any genuine or *bona fide* claim to any amount due to him, the remedy to him is to move before the Civil Court in a money suit



for such recovery.

5. Learned APP submitted that the allegation is of non-encashment of said cheques. However, with regard to the settled law, he fairly submitted that it is a business transaction being money matter and, thus, purely civil in nature.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within four weeks from today, the petitioners be released on bail upon furnishing bail bonds of Rs.25,000/- (twenty five thousand) each with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Darbhanga in Darbhanga Town PS Case No. 233 of 2018, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973.

7. The application stands disposed off in the aforementioned terms

(Ahsanuddin Amanullah, J)

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