

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7656 of 2020

Arising Out of PS. Case No.-340 Year-2015 Thana- SAHARSA District- Saharsa

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SUDHIR KUMAR MADNANI Son of Late Tulsi Das Madnani Resident of
Village - Pakur, P.S. and District - Pakur , (Jharkhand)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kalyan Shankar, Adv.

For the Opposite Party/s : Mr. Binod Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

8. 08-10-2020 As of now, the Courts have not resumed normal physical hearing. The matter has been listed today for consideration through Video Conferencing.

Learned counsel are appearing and making submissions from their residence. The Court master and Secretary are also part of this virtual Court proceedings with the aid of audio visual technology.

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

Learned counsel for the petitioner is expected to honor his undertaking given in the instant case for depositing the requisite court fee and to remove the defects as pointed out by office when called upon.

Petitioner apprehends his arrest in connection with



Saharsa Sadar P. S. Case no.340 of 2015 instituted for the offence under Sections 406 and 420/34 of the Indian Penal Code.

The complainant has alleged that for procurement of stone chips four lakhs Rupees was transferred from the joint account of the accused persons, stone chips, however, were not supplied even though the petitioner is alleged to have assured the complainant that the stone chips would be supplied soon.

Petitioner's counsel submits that even as per the complainant's case the only allegation against the petitioner is of giving an assurance. The petitioner is not an employee of M/S N.S. & Company and, therefore, he is not in any way liable for the allegation. He is an aged person suffering from severe ailments and has no criminal antecedents. It is further submitted that from bare perusal of the allegations made in the complaint petition, it is apparent that the complainant has resorted to the criminal process of the Court to settle a dispute which is primarily civil in nature based on a dispute where the due amount of stone chips was to be supplied by the petitioner in terms of his alleged payment even the alleged payment is denied and disputed by the petitioner.

The learned APP for the State submits that as per report



received from the Court below, proclamation under Section 82 Cr. P. C. was initiated against the petitioner under order dated 26.11.2019. The anticipatory bail application had already been rejected by the Court below prior to issuance of process on 08.11.2019. In spite of issuance of process under Section 82 Cr. P.C. on 26.11.2019, the petitioner has filed the anticipatory bail application before this Court on 20.01.2020.

Upon hearing the parties, this Court is of the view that in view of issuance of process under Section 82 Cr. P. C., as per settled law, in terms of the decision of the Hon'ble Apex Court in the case of *State of Madhya Pradesh Vs. Pradeep Sharma* reported in *(2014) 2 SCC 171*, the petitioner is not in a position to claim the privilege of anticipatory bail. The submissions advanced on behalf of the petitioner may be considered by the Court below in the event the petitioner surrenders before the Court below for grant of regular bail if the petitioner places on record the documentary proof in support of his severe ailments. All mitigating circumstances would be required to be considered by the Court below while deciding the petitioner's prayer for regular bail in accordance with law. Rejection of the prayer for anticipatory bail shall not come in the way of such consideration.



With the aforesaid observation, the anticipatory bail
petition stands rejected.

(Madhuresh Prasad, J)

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