

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.5788 of 2020**

Arising Out of PS. Case No.-496 Year-2019 Thana- COMPLAINT CASE District- Jamui

Surendra Sharma, Son of Munsu Mistri, Resident of Village - Kashmir, P.S.-
Khaira, Distt - Jamui.

... .. Petitioner

Versus

1. The State of Bihar
2. Rajesh Kumar Singh, Son of Late Ramji Prasad Singh, Resident of Village -
Kashmir, P.S.- Khaira, Distt - Jamui.

... .. Opposite Parties

Appearance :

For the Petitioner/s : Mr.Bharat Lal, Advocate
For the Opposite Party/s : Mr.Umeshanand Pandit, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 10-12-2020 Learned counsel for the petitioner undertakes to

remove all the defects as pointed out by office within four

weeks after start of normal functioning of the Court.

Heard learned counsel for the petitioner and Mr.

Umeshanand Pandit, learned APP for the State.

The petitioner in the present case is seeking pre-arrest

bail in connection with Complaint Case No. 496c of 2019

registered for the offences punishable under Section 420 of the

Indian Penal Code and Section 138 of the Negotiable

Instruments Act.

Learned counsel for the petitioner submits that the

cheque in question was issued by the petitioner but that was



issued for a different purpose to the complainant which has been misused. From the materials available on the record it appears that the allegations in the complaint petition that the complainant had paid a sum of Rs. 40,000/- in two installments of Rs. 20,000/- each as advance for purpose of making of a bed and when the said bed was not made available to the complaint, the petitioner had issued the cheque towards refund of the amount, has been supported by the complainant witnesses.

Learned counsel for the petitioner submits that no demand for the amount under the cheque was made and, therefore, the complainant had no cause of action but on perusal of the statement of the complainant on soleman affirmation it appears that the complainant claims to have met the petitioner and demanded the money.

Learned A.P.P. for the State submits that in any case even if the petitioner had not received notice of demand, as per settled law he may appear in the learned court below and show his bonafide by depositing the amount under the cheque at the very first appearance after summon which may be taken into consideration by the learned court below for purpose of bail.

This Court is willing to agree with the submission on behalf of the learned A.P.P. for the State, in the given facts and



circumstances of the case, this Court is not inclined to grant privilege of anticipatory bail to the petitioner.

It is, however, observed that in case the petitioner surrenders and prays for regular bail in the learned court below by depositing the cheque amount in the court below subject to result of the case, the court below shall consider the prayer for regular bail of the petitioner on the same day and shall dispose of the same accordingly. The amount so deposited by the complainant may be allowed to be withdrawn by the complainant subject to the satisfaction of the learned court below.

This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

vats/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

