

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28149 of 2020**

Arising Out of PS. Case No.-300 Year-2019 Thana- BAKHTIARPUR District- Saharsa

KRISHAN CHANDRA MAHTO @ KRISHNA MAHTO Son of - Dashrath
Mahto Resident of Village- Kanaria, P.S.- Bakhtiyarpur, District- Saharsa.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Chandra Mohan Jha, Advocate

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

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA
ORAL ORDER**

2 03-12-2020 Heard both sides through Video Conferencing.

The petitioner apprehends his arrest in Bakhtiyarpur
P.S. Case No.300 of 2019 registered under Sections 341, 323,
325, 420, 379, 504, 506 and 34 of the Indian Penal Code.

The informant named the petitioner and Ram Pukar
Mahto and alleged that his wife received two installments one of
Rs.50,000/- and another of Rs.40,000/- for construction of Awas
under Pradhan Mantri scheme but the middle man Ram Pukar
Mahto, Krishan Chandra Mahto and Dashrath Mahto
fraudulently withdrew Rs.50,000/- and gave only Rs.30,000/- to
the informant. It is further alleged that next installment of
Rs.40,000/- was also withdrawn fraudulently. When the
informant went to complain, the accused persons assaulted.

The learned counsel for the petitioner submits that



petitioner is co-villager of the informant. The withdrawal of statement of Bank does not support the allegation of the informant that the petitioner has withdrawn any amount from the account of the wife of the informant. The police after investigation given privilege of Section 41(1) of the Cr.P.C. and investigating officer did not require from the petitioner but the anticipatory bail petition of the petitioner has been dismissed on the ground that since the petitioner was given privilege of Section 41(1) of Cr.P.C., the anticipatory bail petition is not maintainable. The view taken by the learned Additional Sessions Judge V, Saharsa is erroneous as the provision of Section 41(1) of the Cr.P.C. is not meant for grant of bail during the course of investigation. If the investigating officer does not inquire the custodian interrogation of an accused in a cognizable case, the investigating officer may extend benefit of the provisions contained in Section 41(1) of the Cr.P.C. with a direction to the accused to appear before the Court and seek bail. The petitioner has every apprehension of being sent to custody or being surrendered in Court.

Taking into consideration the facts aforesaid, let the petitioner, above named, in the event of his arrest or surrender within a period of four weeks be released on bail on furnishing



bail bond of Rs.10,000/-(Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned C.J.M., Saharsa in connection with Bakhtiyarpur P.S. Case No.300 of 2019, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

(Prabhat Kumar Jha, J)

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