

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM RESIDENTIAL OFFICE VIA VIDEO APPLICATION)
CRIMINAL MISCELLANEOUS No.84662 of 2019**

Arising Out of PS. Case No.-3081 Year-2013 Thana- PATNA COMPLAINT CASE District-
Patna

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BANSH NARAYAN UPADHAYAY Son of Late Chandra Bansh Narayan
Upadhayay Resident of Chanda, P.S.- Brahmpur, District - Buxar, at present
Residing at Shivpuri, Flat No. 204, Varun Vihar, Near Mamta Apartment, P.S.-
Shastri Nagar, District – Patna. Petitioner

Versus

1. The State of Bihar
2. Sanjiv Kumar Pandit @ Sanjiv Pandit Son of Late Radha Prasad Pandit
Resident of Village - Harpur, P.O.- Harpur, P.S.- Rajpur, District - Buxar.
... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Rajendra Narayan, Sr. Advocate Mr. Sanjay Kumar Sharma, Advocate
For the Opposite Party/s :		Mr.Dinesh Singh, APP
For O. P. No. 2	:	Mr. Harsh Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

7 29-05-2020 This application has been placed for consideration by

the order of the Hon'ble the Chief Justice through virtual court

proceeding.

Heard Mr. Rajendra Narayan, learned Senior Counsel
for the petitioner, Mr. Dinesh Singh, learned APP for the State
and Mr. Harsh Singh learned counsel representing the opposite
party no. 2.

The petitioner in the present case is seeking regular
bail in Complaint Case No. 3081 (C) of 2013 in which
cognizance has been taken for the offences punishable under
Section 138 of Negotiable Instrument Act and Section 420 of



the Indian Penal Code.

Learned Senior counsel for the petitioner submits that the petitioner denies drawing the cheque of Rs. 50,25,000/- in favour of the complainant/opposite party no.2. It is his submission that the court below has taken cognizance of the matter and has issued summons without there being any material on record to show that prior to filing of the complaint case any legal notice was served upon the petitioner.

Learned Senior counsel submits that the petitioner has been falsely implicated in this case and is in jail custody since 21.10.2019. Attention of this Court has also been drawn towards order dated 04.02.2020 passed by a learned Co-ordinate Bench of this Court calling upon the informant to file affidavit indicating that from which head the informant has paid Rs. 52,00,000/- to the petitioner and for what consideration and in this connection whether the informant has made statement to that effect in the Income Tax Return. Learned Senior Counsel submits that the complainant has not brought on record the Income Tax return to show that he had given Rs. 52 lakhs and odd to this petitioner.

Learned counsel representing O. P. No. 2 submits that this petitioner had issued a cheque in favour of the complainant



for Rs. 50,25,000/- which stood dishonoured on presentation for want of sufficient fund. It is only when after a demand was made by the complainant, the petitioner failed to pay the cheque amount covered under the dishonoured cheque whereafter the complaint case was lodged and learned Magistrate has taken cognizance for the offences being satisfied with the materials on the record.

It is his submission that this Court while hearing regular bail application of the petitioner would not exercise its power under Section 482 Cr.P.C. and it is not a quashing application in which the order of the Magistrate is under challenge. Learned counsel further submits that the petitioner has got criminal antecedent and though he has recorded about only '3' cases in paragraph '3' of the application but in fact he has six cases on his head and the records of three cases have been produced by the complainant in the learned court below. It is submitted that on perusal of the nature of the cases against the petitioner, it would appear that all those cases are that of forgery, cheating and criminal breach of trust.

Learned counsel submits that with the counter affidavit which has been filed by O. P. No. 2 the complainant has brought on record his accounts statement and certain



receipts showing that he had deposited cash and had transferred money in the account of the petitioner on several occasion. It is submitted that there is also an agreement contained in Annexure 'E' to the counter affidavit in which the petitioner has acknowledged the receipt of the aforesaid amount and issuance of the cheque bearing no. 002965 dated 30.04.2013 towards refund of the same. It is submitted that on the face of these materials it is totally irrelevant at this stage as this Court is not acting as a trial court to see whether and how the amount has been paid in the account of the petitioner and the issue relating to showing the same in the Income Tax return.

Learned counsel has specifically drawn the attention of this Court towards a bail order as contained in Annexure 'B' to the counter affidavit passed in Cr. Misc. No. 32877 of 2015 in which as back as on 11.08.2015 this petitioner gave a statement before a learned co-ordinate Bench of this Court that he has no criminal antecedent and obtained anticipatory bail in Buxar P.S. Case No. 30 of 2014. It is submitted that the petitioner played a fraud with Court also by making a false statement in the judicial proceeding for his gain.

Learned APP for the State has also opposed the prayer for regular bail of the petitioner and it is submitted that the



petitioner has in fact indulged in act of cheating by defrauding the complainant- O. P. No. 2 by a huge amount.

Having heard learned Senior Counsel for the petitioner and learned counsel for the O. P. No. 2 as also learned APP for the State, this Court is of the view that on the face of the materials available on the record which show that the petitioner had acknowledged receipt of the amount from the complainant-O. P. No. 2, executed an agreement as contained in Annexure 'E' to the counter affidavit which has not been denied by the petitioner and then issued a cheque in terms of the agreement there being a presumption of consideration under Section 139 of the Negotiable Instrument Act 1881, the cheque having failed to be honoured on presentation and the kind of criminal antecedent the petitioner has indicating that similar kind of act and omissions has been alleged against him in several cases, I am not inclined to grant regular bail to the petitioner.

The application is dismissed.

(Rajeev Ranjan Prasad, J)

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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'.

