

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26310 of 2020

Arising Out of PS. Case No.-26953 Year-2014 Thana- PATNA COMPLAINT CASE District-
Patna

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RAM BABU RAI Son of Sri Tharu Rai Resident of Village - Riga, P.S. Riga,
District - Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar
2. Shashi Bhushan Singh, Son of Sri Ram janam Singh, resident of Malti Niwas Jai Hind Colony Rew Ranipur, P.O. and P.S. - Phulwarisharif, District - Patna.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Samrendra Kumar, Advocate
For the informant	:	Mr. Shashi Bhushan Singh, Advocate
For the State	:	Ms. Nirmala Kumari, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

4 17-02-2021 Heard Mr. Samrendra Kumar, learned counsel for the petitioner, Mr. Shashi Bhushan Singh, complainant in person and Ms. Nirmala Kumari, learned Additional Public Prosecutor appearing for the State.

Petitioner apprehends arrest in connection with Complaint Case No. 26953 (C) of 2014 registered for the offence punishable under Section 406 of the Indian Penal Code, 1860 and Section 138 of Negotiable Instrument Act.

The prosecution story on the basis of complaint filed by Shashi Bhushan Singh who is an Advocate practicing in this Court, in person, is that he gave a friendly loan of Rs.6,50,000/-



to the petitioner for business purposes with the assurance that petitioner would return the amount after sometime but he did not return the said amount and upon demand made by the complainant, petitioner gave a cheque of Rs.6,50,000/-, but the same was dishonoured.

Learned counsel for the petitioner submits that the petitioner has not committed any offence in the manner alleged and he has falsely been implicated in this case with oblique motive inasmuch as no amount was given to the petitioner by the complainant. Learned counsel further submits that loan was allegedly given to the petitioner starting from 2009 and the cheque of Rs.6,50,000/- was given to the complainant by the petitioner was in 2014, as such, the same is barred by limitation and can't be recovered by filing the complaint.

On the other hand, the complainant in person submits that cheque was issued in favour of the complainant by the petitioner for Rs.6,50,000/- but the same has bounced and the learned court below has taken cognizance under Section 406 IPC and 138 N.I. Act inasmuch as *prima facie* offence is made out against the petitioner. Complainant further submits that the petitioner had given the cheque of his account which was already closed which shows that intention of the petitioner from



very inception was to deceive and cheat the complainant. Complainant also submits that process under Section 82 Cr. P.C. has already been issued and the petitioner has been declared absconder. As such, he does not deserve the privilege of anticipatory bail.

When the matter was taken up by this Court earlier i.e. on 04.12.2020, learned counsel for the petitioner, Mr. Bimal Kumar Jha and Mr. Samrendra Kumar were heard by virtual mode and on undertaking given by learned counsel for the petitioner that the petitioner is ready to repay the cheque amount subject to the final outcome of the trial, this Court was inclined to grant interim protection to the petitioner. The matter was again taken up for 27.01.2021 and on that date, Mr. Samrendra Kumar, learned counsel for the petitioner sought adjournment to enable him to comply with the order dated 4.12.2020 and deposit the cheque amount of Rs.6,50,000/- subject to final outcome of the trial and taking into consideration the submission made, this Court was inclined to extend the interim relief granted to the petitioner vide order dated 04.12.2020.

Today, learned counsel for the petitioner Mr. Samrendra Kumar has turned around and submits that the complaint itself is not maintainable and he has filed quashing



application which is still pending.

Having heard learned counsel for the parties and taking into consideration the materials on record, the fact that cognizance has been taken against the petitioner by the learned court below on the *prima facie* satisfaction that an offence under Section 406 of the Indian Penal Code and Section 138 of Negotiable Instrument Act is made out against the petitioner and process under Section 82 Cr. P.C. has already been issued against the petitioner and the petitioner is playing tricks with the Court inasmuch as on two occasions categorical statement was made on behalf of the petitioner that he would deposit cheque amount subject to the final outcome of the trial, but now the petitioner has turned around and refused to deposit the amount, I am not inclined to exercise my discretion to grant anticipatory bail to the petitioner.

Accordingly, the prayer for anticipatory bail of the petitioner stands rejected.

(Anil Kumar Sinha, J)

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