

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54268 of 2021

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 Upadhayay, resident of village - Chanda, P.S. Brahmpur, Dist. - Buxar, At present residing at Flat No. 204, Varun Vihar, Near Mamta Apartment, Shivpuri, P.S. - Shastri nagar, Dist. - Patna.

... .. Petitioner

Versus

1. The State of Bihar
2. Sanjiv Kumar Pandit @ Sanjiv Pandit, Son of not known R/o Village - Harpur, Post office - Harpur P.S. - Rajpur, Dist. - Buxar.

... .. Opposite Parties

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Appearance :

For the Petitioner	:	Mr.Dr. Kamal Deo Sharma, Advocate
For the O.P. No. 2	:	Mr. Harsh Singh, Advocate
For the State	:	Mr.Akhileshwar Dayal, APP

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

- 3 15-12-2021 Heard learned counsel for the petitioner, Mr. Harsh Singh, learned counsel for the Complainant-Opposite Party No. 2 and Mr. Akhileshwar Dayal, learned A.P.P. for the State.

This is the third attempt of the petitioner to obtain bail in connection with Complaint Case No. 3081(C)/2013 registered for the offence under Section 138 of the Negotiable Instrument Act and Section 420 of the Indian Penal Code.

Learned counsel for the petitioner submits that earlier the prayer for bail of this petitioner was rejected vide order dated 29.05.2020 passed in Cr. Misc. No. 84662 of 2019. The petitioner denies drawing the cheque of Rs. 50,25,000/- in



favour of the complainant/O.P. No.2. His submission is that no legal notice was served upon the petitioner, however, rejecting his contention this court denied the privilege of regular bail to the petitioner taking note of the fact that the petitioner had acknowledged the receipt of the amount from the complainant/O.P. No. 2. This court also took note of the submission of learned counsel for the complainant that this petitioner had issued a cheque which was dishonoured on presentation and that the petitioner had got criminal antecedent.

Learned counsel submits that the second attempt of the petitioner in Cr. Misc. No. 4164/2021 also failed but this time this court accepted the submission of the complainant/O.P. No. 2 that the complaint is at the stage of evidence before charge, the complainant is ready to cooperate in early disposal of the complaint case by producing his witnesses on every date fixed in the matter and that the trial itself may be concluded within a period of six months. It is for this submissions of the complainant that this court refused to enlarge the petitioner on bail, however, towards the end of the order this court gave further observations as under:

“Learned trial court is directed not to adjourn the case for a longer date and as has been undertaken on behalf of the complainant before this Court, the complainant must produce his witnesses during the



evidence before charge and if the occasion arises, after framing of charge, subject to any order which may be passed by the learned court below if the petitioner applies for the same. With the cooperation of the complainant and the petitioner let the trial be concluded within a period of six months from the date of receipt/production of a copy of this order.

In case the trial is not concluded within a period of six months for no reason attributable to the petitioner, the petitioner will be at liberty to renew his prayer for bail.”

Learned counsel submits that till date evidence before the charge in the complaint case has not been completed. His submission is that the complainant himself has not appeared in course of evidence before charge and his instruction is to say that he is absconding in a case at Hazaribagh, therefore he is not putting appearance.

It is his submission that this petitioner has remained in jail for over two years and at this stage when a substantial number of witnesses are still required to be examined at the evidence before charge stage itself, there is no chance of conclusion of trial in near future.

Mr. Harsh Singh, learned counsel for the complainant/O.P. No. 2 has opposed the prayer for bail of the petitioner. It is his submission that the complainant has been cooperating in course of evidence before charge and has



produced some of the witnesses, but, at this stage, one witness i.e. the complainant/O.P. No.2 is still required to be examined, but due to non-availability of the court his evidence has not been recorded.

Learned counsel for the complainant/O.P. No. 2 has once again submitted that this petitioner has got criminal antecedent of eight cases.

Be that as it may, having regard to the materials showing that this petitioner has remained in jail for a period of more than two years and his further incarceration in judicial custody is not likely to either come in aid of the investigation or the prosecution, this court having noticed that the case is still at the stage of evidence before charge, the framing of charge and further trial is not likely to be concluded in near future, this Court directs release of the petitioner above-named on bail on furnishing bail bond of Rs. 25,000/- (Rupees Twenty Five Thousand) with two sureties of the like amount each to the satisfaction of Sri Avinash Kumar, learned Judicial Magistrate (N.I. Act), Patna in connection with Complaint Case No. 3081(C)/2013, subject to the condition as laid down under Section 437 (3) Cr.P.C.

And further condition that the court below shall verify



the criminal antecedent of the petitioner and in case at any stage it is found that the petitioner has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

And further condition that in course of trial the petitioner shall appear on each and every date fixed in the matter. Two consecutive defaults in putting appearance before the trial court shall invite action towards cancellation of bail.

(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'.

