

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 31658 of 2022

Arising Out of PS. Case No.-460 Year-2021 Thana- NAUBATPUR District- Patna

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1. BABITA DEVI W/o Ram Kumar Rai Resident of Village - Naharbar, P.s.- Maheshi, Distt.- Saharsa.
 2. Ram Kumar Rai @ Rajesh Kumar Jha Son of Late Chhotelal Rai Resident of Village - Naharbar, P.s.- Maheshi, Distt.- Saharsa.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the Opposite Party/s	:	Mr. Anil Kumar, A.P.P.
	:	Mr. Shakib Ayaz, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 22-11-2022 Heard learned counsel for the petitioners, learned counsel for the informant and learned A.P.P. for the State.

The petitioners apprehend their arrest in a case registered for the offences punishable under Sections 406, 419, 420 and 34 of the Indian Penal Code.

At the outset, the learned counsel for the petitioners seeks permission to make rectification in the pleadings made at paragraph '1' of the anticipatory bail application.

Permission is accorded.

The informant alleges that petitioner purchased medicine worth more than Rs. 28 lakhs and gave two cheques which bounced on presentation for encashment.



Learned counsel for the petitioners submits that the petitioners have antecedent one case and petitioner no. 1 is a woman and is wife of petitioner no. 2, it is next submitted that petitioners have been falsely implicated in the present case. Learned counsel next submits that the law is very clear that whenever a cheque bounces a complaint is to be filed in terms of Section 142 of N.I. Act, it is next submitted that Section 2(D) of the Cr.P.C. defines complaint. Learned counsel next submits that the informant instead of filing a complaint has filed the present FIR under Section 406, 419, 420 and 34 of the Indian Penal Code. Learned counsel further submits that from perusal of the allegation as alleged in the FIR it would manifest that the thrust of the allegation is of bouncing of cheque issued by the petitioner but then no complaint case came to be instituted which amply demonstrates that the occurrence as is being alleged had not taken place in the manner it has been alleged, it is next submitted that as far as allegation under Sections 406, 419 and 420 of the Indian Penal Code is alleged the same is not made out for the reason that there is no criminal breach of trust as the petitioner had already issued cheque in lieu of the consideration but then no complaint case came to be instituted, had a complaint case been instituted then perhaps it could have been argued that a case under Section 406 is also made out, it is further submitted that



similarly no offence under Sections 419 or 420 is made out as it cannot be alleged in the nature of allegation that petitioner right from the beginning had intention to cheat the informant when already cheques were issued. Learned counsel next submits that if the cheques bounced the petitioner had incurred a liability to pay the said amount provided the informant would have approached in time the appropriate forum, it is also submitted that if petitioners at this stage is sent to jail the same would amount to travesty of justice as in a duly constituted trial the informant still has to prove whether any offence under Section of the Indian Penal Code is made out or not, it is further submitted that in the event, if the petitioner is acquitted of the charges and he is sent to jail presently how his period of incarceration would be compensated and in the event, if the petitioner is indicted in trial he will serve the sentence.

Learned A.P.P. for the State and learned counsel for the informant opposed the prayer for anticipatory bail of the petitioners but are not able to meet the submission of the learned counsel for the petitioners that though the thrust of the allegation is with regard to bouncing of cheques but then no case with regard to bouncing of cheques was instituted by the informant.

Learned counsel for the informant next submits that process under Section 82 Cr.P.C. has been issued dis-entitling



the petitioners from seeking anticipatory bail.

Learned counsel for the petitioners rebuts the submission and submits that he was already availing his remedies available in law by filing an anticipatory bail application in the Court of learned District Judge, Patna on 29.01.2022 and the same was taken up on 18.04.2022 and in between the said process under Section 82 Cr.P.C. came to be issued and after the anticipatory bail application was rejected by the learned Additional Sessions Judge-II, Danapur, thereafter, he moved before this Court in the month of June 2022 and now the case in the month of November is being taken up.

Considering the submissions made by the learned counsel for the petitioners, the petitioners above-named, in the event of their arrest or surrender before the learned trial court within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs. 10,000/- (Rupees Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned trial court where the case is pending/successor court in connection with Naubatpur P.S. Case No. 460 of 2021 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

The learned trial Court before accepting the bail bonds will verify that as to whether the petitioners prior to



issuance of the process under Section 82 Cr.P.C. had filed his anticipatory bail before the Court of District Judge, Patna or after the issuance of the process under Section 82 Cr.P.C., the same was filed. In the event, if it is found that an anticipatory bail application was filed after the process under Section 82 Cr.P.C. was issued, then the present anticipatory bail order shall not be given effect.

(Satyavrat Verma, J)

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