IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31310 of 2022

Arising Out of PS. Case No.-572 Year-2021 Thana- MOTIHARI TOWN District- East Champaran

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SHAKIL AHMAD SON OF JAHIR AHMAD @ JAHIR R/O VILLAGE- CHHATAUNI WARD NO.-18, P.S.- CHHATAUNI, DISTRICT- EAST CHAMPARAN

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Madhurendra Kumar
For the Opposite Party/s : Mr.Kumar Veerendra Narayan

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CORAM: HONOURABLE MR. JUSTICE SHAILENDRA SINGH
ORAL ORDER

4 28-09-2022 The learned counsel for the petitioner is directed to remove all the defects pointed out by the Stamp Reporter within one month.

Heard learned counsel for the petitioner and the State.

Petitioner seeks regular bail in Motihari Town P.S. Case No. 572 of 2021 registered for the offences punishable under sections 406, 420, 120 (B), 34 of the Indian Penal Code and section 138 of N.I Act.

Allegedly, this petitioner borrowed Rs.9,50,000/- from the informant with an assurance to him that the said amount would be returned to the informant within three weeks but the same was not returned and thereafter on repeated requests made by the informant the petitioner finally agreed to return the said money in installments and in this regard he issued one cheque in July 2021 which was dishonoured by the bank concerned on the ground that the petitioner's bank account had already been closed.

The main submissions advanced by Shri Madhurendra Kumar appearing for the petitioner are that against the petitioner there is criminal antecedent of four cases in which he is on bail and in the instant matter the main allegation is of issuing a cheque in favour of the informant by the petitioner and the said cheque was dishonoured, the said alleged act of this petitioner mainly attracts the penal provision of the N.I. Act only and offences punishable under sections 406 and 420 I.P.C. do not attract in this case as there is no material to show that the petitioner had any dishonest intention while taking money from the informant and against the petitioner investigation has been completed and he has been languishing in jail since 01.10.2021. Further submission is that in similar type of cases the accused persons of those cases have been granted bail by co-ordinate benches of this Court vide orders passed in Cr. Misc. No.6891 of 2021 and Cr. Misc. No. 6883 of 2021 mainly considering the fact that the alleged act of the accused mainly attracts the offence under N.I. Act.

Learned counsel for the petitioner has placed reliance on the judgment of the Hon'ble Apex Court reported in 2009, SCC page 696 and has mainly taken the defence that the alleged offences of sections 420 and 406 of I.P.C. are not made out in the present case as the petitioner had no fraudulent and dishonest intention at the time of making transaction with the informant.

On the contrary the learned APP Shri Kumar Veerendra Narayan appearing for the State and learned counsel Shri Abhishek Kumar appearing for the informant have vehemently opposed the prayer for bail and submitted that the petitioner is habitual in defrauding the innocent persons and against him several criminal cases have been lodged under sections 420 and 406 of I.P.C along with 138 of N.I Act and the facts of F.I.R itself show that the petitioner had dishonest intention from the very beginning of making transaction with the informant as at the time of issuing cheque the petitioner's bank account had already been closed but even then the petitioner issued cheque in favour of the informant on the pretext of returning money to the informant and the said fact clearly shows that petitioner had deceitful intention to cheat the informant from the very beginning.

Heard both the sides, perused the F.I.R.

The present case relates to a money transaction having taken place between the petitioner and the informant. There is not a dispute about a cheque having been issued by the petitioner in favour of the informant and the same was dishonoured by the bank concerned which may attract the offence punishable under N.I. Act but so far as the offence of cheating punishable under section 420 of I.P.C is concerned the same may also attract in this case as at the time of issuing cheque by the petitioner in favour of the informant the petitioner's bank account had already been closed as reflects from the F.I.R but even then the petitioner issued the said cheque in favour of the informant on the pretext of returning the borrowed money and the said fact goes in favour of prosecution's the allegation that the petitioner was having dishonest intention from the very beginning of the alleged transaction and moreover, several cases of criminal breach of trust and cheating have also been lodged against the petitioner which show that he is habitual in committing such type of offences.

Considering the above discussed facts, in the opinion of this Court, the petitioner does not deserve to the privilege of bail accordingly, his prayer for bail stands rejected.

Petitioner may renew his prayer for bail after six months, if no significant progress is made by prosecution in his case.

(Shailendra Singh, J)

Hassan/maynaz/-

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