

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71000 of 2021

Arising Out of PS. Case No.-604 Year-2020 Thana- DANAPUR District- Patna

BRAJESH KUMAR ROY Son of Kamlesh Kumar Rai @ Kamlesh Roy
Resident of Village - Karbasin, Police Station Sahar in the district of Bhojpur.
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Advocate
For the Opposite Party/s : Mr. Madan Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 01-08-2022 Heard learned counsel for the petitioner and learned
A.P.P. for the State.

Let the defect(s), if any, be removed within a period
of four weeks.

The petitioner apprehends his arrest in a case
registered for the offences punishable under Sections 420, 406,
120(B), 504 of the Indian Penal Code read with Section 138 of
the Negotiable Instrument Act.

Learned counsel for the petitioner submits that
petitioner is a person with clean antecedent.

The informant alleges that the petitioner had issued a
cheque of Rs.9,00,000/- and the same on presentation bounced
and thereafter the petitioner assured that he will repay the
amount when it was brought to his notice that the cheque has
bounced on account of insufficient fund. It is alleged that



COVID-19 intervened as a result of which the informant could not resort to remedy available in law and thereafter a complaint was filed under Section 156(3) of the Cr.P.C. based on which the present FIR came to be instituted.

Learned counsel for the petitioner submits that the law is clear that whenever a cheque bounces the remedy resorted has to be in terms of the Negotiable Instrument Act. Learned counsel further submits that Section 2(d) of the Cr.P.C. defines complaint and Section 142 of the Negotiable Instrument Act incorporates that no Court shall take cognizance of any offence punishable under Section 138, except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque. Learned counsel submits that it absolutely does not stand to reason that how a case under Sections 420, 406, 120(B) and 504 of the Indian Penal Code has been instituted when the informant instead of resorting to remedy available in law has resorted to a remedy unknown to law. It is next submitted that had the informant filed a complaint in terms of Section 142 of the Negotiable Instrument Act and thereafter the payment would not have been made then it could not have been presumed that the petitioner had committed cheating or criminal breach of trust depending on the facts of



the case but in absence of resorting to remedy available in law the informant filed a police station case only to coerce the petitioner into submission so that on account of fear of arrest, he may part with the amount which he had never given to the informant as it has been specifically pleaded in para 9 of the anticipatory bail application. Learned counsel further submits that it absolutely does not stand to reason that how the police assumes jurisdiction in case under Section 138 of the Negotiable Instrument Act. Learned counsel further submits that had the cheque been encashed then no offence under the Indian Penal Code would have been committed but merely because cheque had bounced that in itself does not give rise to an offence under the Indian Penal Code until and unless the remedy available is resorted to by a person in whose favour the cheque has been issued.

Learned A.P.P. for the State opposes the prayer for anticipatory bail of the petitioner.

Considering the submissions made by the learned counsel for the petitioner, the petitioner above-named, in the event of his arrest or surrender before the learned Court below within a period of six weeks from today, be released on anticipatory bail on furnishing bail bonds of Rs.5,000/- (Rupees



Five Thousand) with two sureties of the like amount each to the satisfaction of the learned court below where the case is pending/successor court in connection with Danapur P.S. Case No. 604 of 2020, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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