

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.15376 of 2022

Arising Out of PS. Case No.-754 Year-2019 Thana- MOTIHARI TOWN District- East
Champaran

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Om Prakash Sharan @ Om Prakash Sharma Son of Jaillal Sharan R/O
Village- Siswa, P.S.- Banjariya, District- East Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Prateek Tandon, Advocate
For the Opposite Party/s	:	Ms. Veena Kumari Jaiswal, APP
For the informant	:	Mr. Sanjay Singh, Sr. Advocate
		Mr. Pravin Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

5 11-01-2023 Heard learned counsel for the petitioner, learned APP

for the State and learned Senior counsel appearing for the

informant.

The petitioner has preferred this application for grant
of regular bail in a case registered under sections 406 and 420
of the Indian Penal Code and section 138 of the N.I. Act.

As per the prosecution case, it is stated by the
informant that four trucks owned by the informant, the details
of which has been given in the FIR were given on monthly
rental to the petitioner. The total amount due and payable by the
petitioner was Rs. 24.5 lacs. A cheque for the said amount was
given by the petitioner to the informant along with cash of
Rs.70,000/-. However, on depositing the same the cheque



bounced and as such the FIR.

It is submitted by learned counsel for the petitioner that the petitioner has been falsely implicated in the case. At the outset it is submitted that in view of the offence under section 138 of the N. I. Act, lodging of the FIR is not maintainable. It is submitted that the petitioner had started the brick work and there was some agreement between the parties for which the cheque had been given by way of security. No amount was due however, the cheques were misused by the informant and the instant case has been lodged on false allegations. It is submitted that pursuant to the order of this Court, a sum of Rs.5 lacs has been paid to the informant and the petitioner has been enlarged on provisional bail. Prior to being enlarged on provisional bail the petitioner had remained in custody since 30.12.2021 ie for about 8 months and investigation in the case has concluded.

The application of bail is opposed by learned APP for the State and learned Senior counsel appearing for the informant.

It is submitted by learned Senior counsel for the informant that the FIR is not registered only under section 138 of N.I. Act but also under sections 406 and 420 of the Indian Penal Code and as such the same would be maintainable. The petitioner has admitted to agreement between the parties and also having given the cheque. Once the cheque was given by the



petitioner even by way of security, offence under section 420 of the Indian Penal Code is established. It is further submitted that having paid the sum of Rs. 5 lacs, the petitioner in effect has accepted the dues of Rs.24 lacs. It is finally submitted that till the petitioner pays the balance amount or undertakes to pay the balance amount, he may not be enlarged on bail and the application be rejected.

Having heard learned counsel for the parties and taking into consideration the nature of allegation in the FIR which in the opinion of the Court relates to an agreement between the parties as a result of hiring of the truck by the petitioner which was owned by the informant, the petitioner having remained in custody for about 8 months prior to his release on provisional bail and investigation in the case having concluded, the Court is inclined to enlarge the petitioner on bail and the provisional bail granted to the petitioner pursuant to the order dated 25.8.2022 passed in the instant case in connection with Motihari Town P.S. Case no.754 of 2019 on furnishing bail bond of Rs.10,000/ (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, East Champaran, Motihari is hereby confirmed.

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(Partha Sarthy, J)

