

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.27572 of 2023

Arising Out of PS. Case No.-129 Year-2022 Thana- KANKARBAG District- Patna

RAKESH RAJ @ GULLU SON OF LATE RATNESHWAR PRASAD
SHRIVASTAVA HOUSE NO 152, RENTAL FLAT, NEAR PATLIPUTRA
SPORTS COMPLEX, PS- KANKARBAGH, DISTT- PATNA

... .. Petitioner/s

Versus

1. The State of Bihar
2. HIMANUSHU SHEKHAR SON OF LATE AYODHYA PRASAD
PANDEY RESIDENT OF RENTAL FLAT NO. 248, PS- KANKARBAGH,
DISTT- PATNA

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Jagjit Roshan, Advocate
For the Opposite Party/s	:	Mr. Rabindra Kumar, A.P.P.
	:	Mr. Parashuram Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 2 24-07-2023 1. Heard learned counsel for the petitioner, learned
counsel for the informant and learned A.P.P. for the State.
2. The petitioner apprehends his arrest in a case
registered for the offences punishable under Sections 406, 420
and 34 of the Indian Penal Code and Section 138 of Negotiable
Instrument Act.
3. The informant alleges that petitioner and his full
brother Rana Kumar sold a land which was registered in the
name of the petitioner pertaining to Khata No. 37 and 47,
Survey Plot No. 132, 133, 134, 135 and 156 for Rs. 25,00,000/-.
4. Learned counsel for the petitioner submits that the
petitioner is a person with clean antecedent and has been falsely



implicated in the present case, it is next submitted that informant alleges that the petitioner assuring the informant that he will sell his land to him took Rs. 25,00,000/- from him in intervals but the land was registered in favour of another purchaser and when the informant protested, two cheques were issued but both on presentation for encashment bounced. It is also submitted that from perusal of the allegation as alleged in the FIR it would manifest that the informant does not even remotely disclose that how he paid Rs. 25,00,000/- to the accused persons including the petitioner, it is next submitted that even presuming what has been alleged is true without admitting then an offence under Section 138 of the NI Act is bailable. It is next submitted that it is not in dispute that the land belongs to the petitioner and he had already sold the land to the purchaser earlier and the informant tried to falsely implicate him by alleging that the petitioner had taken an amount of Rs. 25,00,000/- in name of selling his land to him.

5. The learned counsel for the petitioner submits that an FIR is not maintainable in the case relating to bouncing of cheque, it is further submitted that had a notice been served on the petitioner with regard to the cheque in question then he would have filed his reply rebutting the allegations that the



cheque was not issued for any consideration but then the said opportunity never came to the petitioner.

6. Learned A.P.P. for the State and learned counsel for the informant opposed the prayer for anticipatory bail of the petitioner but are not in a position to rebut the submission of the learned counsel for petitioner that for offence under Section 138 of the NI Act an FIR is not maintainable, further the FIR does not disclose how the amount of Rs. 25,00,000/- was paid to the petitioner and the accused persons.

7. 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 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) 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 Kankarbagh P.S. Case No. 129 of 2022 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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