

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40770 of 2023

Arising Out of PS. Case No.-1 Year-2021 Thana- AURANGABAD COMPLAINT CASE
District- Aurangabad

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Jitendra Kumar S/O Babban Singh R/O Village- Tarar, Ps. Daudnagar, Dist. Aurangabad

... .. Petitioner/s

Versus

1. The State Of Bihar
 2. Gopal Sharan Singh S/O Late Mathura Singh R/O Village- Tola Budhanbigha Tarar, Po. Tarar, Ps. Daudnagar, Dist. Aurangabad
- Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Suraj Kumar, Advocate

For the Opposite Party/s : Mr. Mukesh Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 03-08-2023 1. Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. The petitioner apprehends his arrest in connection with Complaint Case No. 1 of 2021 registered for the offences punishable under Sections 420 and 406 of the Indian Penal Code read with Section 138 of the Negotiable Instruments Act.

3. Learned counsel for the petitioner submits that the petitioner is a person with clean antecedent and the complainant alleges that petitioner had taken loan from him and in lieu thereof had issued three cheques for an amount of Rs. 14,25,000/- but the cheques on presentation for encashment bounced.

4. Learned counsel for the petitioner submits that the petitioner has been falsely implicated in the present case, it is



next submitted that from perusal of the allegations as alleged in the complaint it would manifest that the complainant has not disclosed that as to what amount was loaned by him to the petitioner in lieu whereof the aforesaid three cheques were issued, it is further submitted that petitioner and the complainant are brokers and on account of a land deal, the cheques were given to the complainant by way of security. It is also submitted that petitioner will contest the case as the cheques were not issued in lieu of any consideration. Learned counsel further submits that offence under Section 138 of the NI Act is bailable and in the event, if the petitioner is convicted, he will have to pay the money back and will also serve the sentence, it is further submitted that in the nature of allegation, no offence under Sections 420 and 406 of the Indian Penal Code is made out but only to make the offence non-bailable, cognizance has been taken in a mechanical manner.

5. Learned A.P.P. for the State and the learned counsel for the complainant oppose the prayer for anticipatory bail of the petitioner but are not in a position to rebut the submissions of the learned counsel for the petitioner that offence under Section 138 of the NI Act is bailable and in the event, if the petitioner is convicted by a court of competent jurisdiction, he will serve the sentence, it is also submitted that process under Section 82



Cr.P.C. has been issued.

6. The Court completely fails to appreciate that how the learned trial courts are issuing process under Section 82 of the Cr.P.C. in mechanical manner when the accused persons are availing their remedies available in law and their cases are pending before the court of competent jurisdiction and before this Court.

7. Considering the submissions made by the learned counsel for the petitioner and the fact that petitioner is disputing issuance of cheques for any consideration, 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. 10,000/- (Rupees Ten 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 Complaint Case No. 1 of 2021 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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