

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 40633 of 2022**

Arising Out of PS. Case No.-73 Year-2016 Thana- PATNA COMPLAINT CASE District-
Patna

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Sanjiv Kumar @ Pappu Son Of Lal Bahadur Singh R/O Village- Tajan Bigha,
P.S.- Chauram, District- Arawal

... .. Petitioner/s

Versus

1. The State of Bihar
2. Rakesh Kumar Son Of Bindeshwari Mistri R/O Village-Bara, P.S.- Arwal,
District- Arwal

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Y. C. Verma, Sr. Advocate.

Mr. Ashok Kumar, Advocate.

For the Opposite Party/s : Mr. Sanjay Kumar Tiwary, APP.

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**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH
ORAL ORDER**

9 23-01-2023 Learned counsel for the petitioner is permitted to

remove the defect(s), as pointed out by the office, if any, within

a period of three weeks from today.

Heard learned senior counsel for the petitioner and

learned Additional Public Prosecutor for the State.

The petitioner is apprehending his arrest in connection

with Complaint Case No. 73 (C) of 2016 registered for the

offences punishable under Sections 420, 120B, 467, 468 and

471 of the Indian Penal Code.

As per the prosecution case, the complainant met one

Shambhu Kumar, who claimed that he had connection with

Colonel Sanjeev Kumar and an Army Doctor, Gautam Kumar.



They assured the complainant to get him appointed in Army. On saying of Shambhu Kumar, the complainant went to Danapur Military Hospital and found all the accused persons sitting there. It is said to him by all the accused persons that they used to help the candidate in recruitment for a sum of Rs. 3,50,000/- per head and the petitioner and others were taken to Katihar for filling up some forms. It is further alleged that the complainant and others gave total Rs. 40,00,000/- to Sanjeev Kumar and Gautam Kumar as per their demand in the pretext of getting them appointed in Army. It is also alleged that the complainant and others received their joining letters and when they reported to Katihar Office, they were said that no such letter was issued by the Office and they were cheated. It is further alleged that when the complainant and others asked to return their money, the accused persons gave them only assurance.

Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. There is general and omnibus allegation against the petitioner. He further submitted that the complainant has himself admitted in his S.A. that he has no proof regarding giving of money to the petitioner/accused persons. The petitioner is accused in one more criminal case as stated in para 3 of the bail petition.



Learned counsel further submitted that in the present case no allegation of a dishonest intention from the inception.

Learned A.P.P. for the State has vehemently opposed the anticipatory bail petition of the petitioner.

The concept of cheating shall have no application where the act which is sated to constitute cheating was itself an offence. The complainant was aware of the crime and cannot contend that failure to commit the crime amounted to cheat him.

Section 23 of the Indian Contract Act declares void a contract which is contrary to the law or opposed to public policy. Therefore, even under the civil law the agreement between the parties was unlawful in its very inception. Both had agreed to do something which was prohibited in law. The contract ex facie being unlawful, both the parties can be said to have intended to exploit the law for an illegal purpose.

Considering the aforesaid facts and circumstances, let the above named petitioner, in the event of his arrest/surrender within a period of six weeks from today, be enlarged on bail on furnishing bail-bond of Rs. 20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of the learned Court concerned, Danapur in connection with



Complaint Case No. 73 (C) of 2016, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

The application stands allowed.

(Chandra Prakash Singh, J)

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