

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.62559 of 2023

Arising Out of PS. Case No.-759 Year-2022 Thana- CIVIL LINE District- Gaya

MONU KUMAR, aged about 27 years, Male, S/o VIJAY GOSWAMI, R/o
Mohalla - Janakpur, P.S. - Mufassil, Distt. - Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Priya Ranjan, Advocate

For the Opposite Party/s : Mr. Rana Randhir Singh, APP

For the informant : Mr. Pramod Bandh Bihari Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE PURNENDU SINGH
ORAL ORDER

3 20-12-2023 Heard Mr. Priya Ranjan learned counsel appearing on
behalf of the petitioner, Mr. Rana Randhir Singh learned APP
for the State and Mr. Pramod Bandh Bihari Singh, learned
counsel for the informant.

2. The petitioner seeks pre-arrest bail in connection
with Civil Line P.S. Case No. 759 of 2022 dated 10.11.2022
registered for the offence(s) punishable under Sections 406 and
420 of the Indian Penal Code.

3. Allegation in the FIR is that of dishonour of
cheque which was presented by the informant, duly signed by
the brother of the petitioner for an amount of rupees five lacs,
which got dishonoured.

4. Learned counsel appearing on behalf of the



petitioner submits that the transaction being purely with respect to the bank transaction and there is acceptance of amount of Rs.5 lakhs by the brother of the petitioner, petitioner is nowhere concerned with such transaction in which the instrument got dishonoured. He further submits that the co-accused, Mukesh Kumar @ Mukesh Kumar Goswami, who is brother of the petitioner, has already been released on pre-arrest bail by a co-ordinate Bench of this Court vide order dated 01.12.2023 passed in Cr. Misc. No.72572 of 2023. Learned counsel has taken technical plea that FIR is maintainable so far as Section 406 of IPC is concerned but no FIR can be registered in which allegation is that of dishonour of cheque, which comes under Section 138 of Negotiable Instruments Act. The law laid down by the Apex Court binds the complainant in such cases to register complaint and not FIR.

5. Learned APP for the State vehemently opposed the prayer for grant of pre-arrest bail.

6. Mr. Pramod Bandh Bihari Singh, has tendered his appearance on behalf of the informant and submits that it is a case of breach of trust. The cheque presented by his brother got dishonoured. The allegation against the petitioner is that of committing criminal act and the case has been registered under



Sections 406 and 420 of IPC for committing forgery and criminal breach of trust by blackmailing the informant. The petitioner owns Rs.11,50,000/- The petitioner has also suppressed his crime history. On these grounds, he submits that petitioner don't deserve to be released on bail.

7. Having considered the rival submissions made on behalf of the parties, as well as, the allegation made in the FIR, it appears that ingredient of committing forgery is there, however, so far as dishonour of cheque is concerned, the same was issued by the brother of the petitioner and the said got dishonoured. The submission made on behalf of the petitioner that FIR cannot be registered in such transaction and for the dishonour of cheque, the only allegation sustainable under Section 138 of Negotiable Instrument Act, cannot be sustained, as in the present case, the petitioner has committed forgery and has played fraud with the informant.

8. Since the brother of the petitioner has been released on anticipatory bail, the District Court is directed to call for the memorandum of Association and Article of Association and verify from the recital made therein, as to whether the petitioner is also one of the members of Board of Director. Further he will verify from the Registrar of the



company whether the petitioner is one of the share-holders in the said company.

9. In case, it is found that the petitioner is neither the Director nor the share-holder in the company, the petitioner is directed to be released on bail, in the event of his arrest or surrender before the Court below within a period of six weeks from today, on furnishing bail bond of Rs. 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate 1st Class, Gaya in connection with Civil Line P.S. Case No. 759 of 2022, subject to the conditions as laid down under Section 438(2) of the Cr.P.C, **subject to the condition that Bodhgaya Milk Product Limited is liable to make payment of the entire amount of the deposit into the account of the informant within a period of 9 months.**

10. With the aforesaid observation/direction, the bail application stands disposed of

(Purnendu Singh, J)

Sanjay/-

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