

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73187 of 2022

Arising Out of PS. Case No.-775 Year-2022 Thana- FORBESGANJ District- Araria

BIRENDRA KUMAR SAH Son of Late Likhanichand Sah R/V- Kathara
Dholbajja, P.S-Forbesganj, Dis- Araria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Ajit Kumar Ojha, Advocate Mr.Navneet Jha, Advocate Mr.Kuldeep Kumar, Advocate Mr.Arya Vashist, Advocate Mr.Akhilesh Kumar, Advocate
For the State	:	Mr.Binod Kumar, APP Mr.Vivek Nand Singh, APP Mr.Aarsh Kumar, APP

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL ORDER

2 29-04-2023 Heard the learned counsel for the
petitioner and learned APP for the State.

This is an application for grant of anticipatory bail in connection with Forbesganj P.S. Case No.775 of 2022, registered for offences under Sections 420, 406, 506 and 34 of the IPC and Section 138 of the Negotiable Instruments Act.

The case of the prosecution, in brief as per the written report of the informant, is that the petitioner had arranged for a deal regarding sale of land by one Anita Kumari to the petitioner and for



the said purpose an agreement was entered into and the sale consideration was fixed at a sum of Rs.44 lacs, out of which Rs.17 lacs in cash, is alleged to have been given to the said Anita Kumari, however, subsequently, the informant came to know that the land in question does not belong to the said Anita Kumari, whereupon the informant is stated to have confronted the petitioner and then the petitioner is stated to have assured the informant that he would arrange for another land and in case no other land is available, he would execute sale deed with regard to his own land in his favour. It is also alleged that the informant alongwith police personnel had gone to the house of the petitioner, whereupon the informant had forced the petitioner to pay money, leading to the petitioner handing over four cheques amounting to a sum of Rs.23 lacs, however, the same had bounced when they were presented before the bank for clearance.

The learned counsel for the petitioner has submitted that the petitioner is innocent, he



has been falsely implicated in the present case and he is having a clean antecedent. The learned counsel for the petitioner has further submitted that the dispute in question is purely in the nature of a civil dispute and there is no proof that a sum of Rs.17 lacs in cash was ever given to the petitioner or the said Anita Kumari. It is also submitted that at best the informant has the remedy of approaching the competent civil court having appropriate jurisdiction for specific performance of the agreement in question, however, no criminal offence is made out. It is further submitted that as far as the cheques in question are concerned, the same were taken under coercion, threat and duress as also upon the petitioner being assaulted & tortured badly, as has also been admitted in FIR, inasmuch as the police personnel had gone to the house of the petitioner, alongwith police force and forcibly taken the cheques in question, a fact which also stands substantiated from the complaint case filed by the petitioner, bearing Criminal Complaint



No.1402/2022, before the learned Court of CJM, Araria, wherein the entire incident in question has been narrated. Nonetheless, it is the contention of the petitioner that in case cheques have bounced, the informant has remedy under the provisions of Negotiable Instruments Act.

Per contra, the learned APP for the State as also the learned counsel appearing for the informant have vehemently opposed the prayer for bail and have submitted that the petitioner had cheated the informant of his hard earned money and subsequently, an agreement has been entered into between Anita Kumari and the informant for refunding a sum of Rs.17 lacs.

Having regard to the facts and circumstances of the case, taking into consideration the materials available on record as also the submissions made by the learned counsel for the petitioners and the learned counsel appearing for the informant, it is apparent that an agreement has been entered into between the aforesaid Anita Kumari and the informant,



however, there is no imputation qua the petitioner herein of having misappropriated the said sum of Rs.17 lacs, hence this Court finds that as far as bouncing of cheques in question are concerned, the said dispute would fall within the ambit of the provisions contained in the Negotiable Instruments Act and moreover, Section 138 of the Negotiable Instruments Act, 1881 is a bailable offence.

Under such circumstances, this Court finds that prima facie the nature of accusation levelled by the informant in the present case is purely in the nature of a civil dispute and the informant is trying to give it a colour of criminal offence to extract money from the petitioner, apart from the fact that Section 138 of the Negotiable Instruments Act is a bailable offence, hence this Court deems it fit and proper to admit the petitioner to the privilege of bail.

Accordingly, the above named petitioner is directed to be released on anticipatory bail in the event of his arrest/surrender before the court below within a period of four weeks from today, on



furnishing bail bonds of Rs. 10,000/- (rupees ten thousand) with two sureties of the like amount each to the satisfaction of learned Sessions Judge, Araria in Forbesganj in connection with Forbesganj P.S. Case No.775 of 2022, subject to the conditions as stipulated under Section 438(2) of the Code of Criminal Procedure.

(Mohit Kumar Shah, J)

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