

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17064 of 2024

Arising Out of PS. Case No.-638 Year-2023 Thana- NAWADAH COMPLAINT CASE
District- Nawada

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SURENDRA MISTRI Son of Bindeshwari Prasad Resident of Sirdala, P.S.-
Sirdala, District-Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar
2. UMESH KUMAR Son of Bindeshwari Prasad Resident of Roh, P.S.-Roh,
District-Nawada.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s :	Mr.Devendra Prasad Singh, Adv
For the Opposite Party/s :	Mr.Madan Kumar, APP
	Mr. Ashok Kumar, Adv
	Mr. Dhirendra, Adv

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 04-04-2024 1. Heard learned counsel for the petitioner and

learned A.P.P. for the State along with learned counsel appearing

on behalf of OP No. 2.

 2. The petitioner apprehends his arrest in a case

registered for the offences punishable under Sections 406 and

420 of the Indian Penal Code.

 3. Learned counsel for the petitioner submits that

petitioner was implicated in a case registered under Sections

467, 468 and 471 being Bundelkhand PS Case No. 873 of 2022,

in which the police after investigation submitted final form

exonerating the petitioner. It is next submitted that the said case



was also instituted by the instant complainant. The learned counsel further submits that petitioner and the complainant are own brothers, and from perusal of the allegations as alleged in the complaint, it would manifest that the dispute is purely civil to which a criminal colour has been given. It is further submitted that the petitioner earlier had instituted money suit and also a complaint case under the Negotiable Instruments Act (NI Act) as the cheque issued by the OP No. 2 for an amount of Rs. 24,70,000/- bounced when the same was presented for encashment. It is further submitted that after the petitioner instituted money suit and a case under the NI Act when the present complaint case came to be instituted. It is next submitted that it is easy to institute a complaint case in which the complainant along with two witnesses appears and thereafter cognizance is taken as the court till then does not have the opportunity to hear the defence of the accused. It is further submitted that from perusal of the allegation as alleged in the instant complaint case, it would manifest that the complainant alleges that he was distributor of Roh Bharat Gas and since the OP No. 2 was suffering from some mental issues as such under a written agreement he had handed over the business to the petitioner who took loan from the bank in name of the business



and thereafter it is alleged that as of date the petitioner owes Rs. 1,40,85,941/- to the OP No. 2. It is also alleged that the said amount has been misappropriated.

4. The learned counsel submits that if what has been alleged in the complaint case is true in that event the complainant ought to have moved before a court of competent civil jurisdiction for getting the matter adjudicated as *prima facie* from the complaint, it appears that it arises from breach of an agreement. The learned counsel next submits that he vehemently disputes the allegations. It is also submitted that the instant criminal case has been instituted only with the view to coerce the petitioner into submission so that he parts with the fanciful demands of the OP No. 2 under fear of criminal case.

5. The learned APP along with learned counsel appearing on behalf of the OP No. 2 opposes the anticipatory bail application of the petitioner but are not in a position to rebut the submission of the learned counsel for the petitioner that the dispute is purely civil to which a criminal colour has been given and the petitioner prior to instituting of the instant complaint had already filed a money suit and a case under the NI Act.

6. 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 Complaint Case No. 638 of 2023, subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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