

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26392 of 2024

Arising Out of PS. Case No.-555 Year-2023 Thana- SAHARSA SADAR District- Saharsa

Pankaj Jha @ Pankaj Kumar Jha S/O Late Brahmanarayan Jha R/O Village-
Batraha, Ward No. 23, Near Premlata College, P.S- Saharsa Sadar, Distt.-
Saharsa.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Mithesh Ojha S/O Late Pitamber Ojha R/O Mohalla- Masomat Pokhar,
Bangoan Road, P.S- Saharsa, Distt.- Saharsa.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Chandra Mohan Jha, Advocate

For the Opposite Party/s : Mr. Chandra Bhushan Prasad, APP

Mr. Pramod Mishra, Advocate

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

- 2 20-04-2024 1. Heard learned counsel for the petitioner, learned
APP for the State along with learned counsel appearing on
behalf of the informant.
2. The learned counsel for the petitioner submit that
petitioner seek anticipatory bail in a case registered under
Section 341, 323, 448, 406, 420, 384, 34, 504 and 506 of the
IPC.
3. The learned APP submits that the offences for
which the instant FIR has been instituted carries punishment of
less than seven years.
4. At this stage the learned counsel for the petitioner
submits that petitioner was granted the privilege of police bail in



terms of Section 41(A) of the Cr.P.C., but thereafter the police after investigation submitted charge sheet, it is next submitted that the learned Magistrate differing with the police report took cognizance of the offences under Sections 406 and 420 of the IPC read with Section 138 of the NI Act.

5. It is further submitted that it is well settled principle of law that an FIR is not maintainable with respect to an offence under Section 138 of the N.I. Act. It is further submitted that from allegation as alleged in the FIR, it would manifest that the informant does not even remotely suggest that any cheque was presented for encashment which bounced, as such it absolutely does not stand to reason that on what basis cognizance came to be taken under Section 138 of the N.I. Act. It is further submitted that the dispute is purely civil to which a criminal colour has been given when the allegations as alleged in the FIR is appreciated. It is next submitted that the informant alleges that he had given an amount of Rs.18 lakhs to the petitioner for the purposes of investing in real estate and the petitioner also returned an amount of Rs.9 lakhs to the informant from the profit, but then his original amount which he had given i.e. Rs.18 lakhs has not been returned till date. It is thus submitted that if what has been alleged is true without



admitting then the informant ought to have moved before a court of competent civil jurisdiction for recovering the amount, so that the petitioner could also have got an opportunity to rebut his claims in a duly constituted civil proceedings, but then the instant FIR has been instituted only with a view to use the criminal courts as a tool for recovery.

6. The learned APP and the learned counsel appearing on behalf of the informant opposes the anticipatory bail application of the petitioner, but then are not in a position to rebut the submission of the learned counsel for the petitioner that prima facie from bare reading of the FIR no offence under Section 138 of the N.I. Act is made out nor an FIR is maintainable with respect to an offence relating to bouncing of cheque and the dispute is purely civil to which a criminal colour has been given.

7. 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 Court below within a period of six weeks, is directed to be released on bail on his furnishing bail-bonds in the sum of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Saharsa in



connection with Saharsa Sadar P.S. Case No.555 of 2024,
subject to the conditions laid down under Section 438(2) of the
Cr.P.C.

8. The application stands allowed.

(Satyavrat Verma, J)

Prakash Narayan

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