

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58579 of 2024

Arising Out of PS. Case No.-63 Year-2019 Thana- MOHANIYA District- Kaimur (Bhabua)

AFTAB KHAN S/o Mohiuddin Khan R/o vill - Rasulpur, P.S. - Sasaram
(Muffasil), Distt. - Rohtas

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Amit Kumar Pandey, Adv.
For the Opposite Party/s	:	Mr. Manoj Kumar, APP
For the Informant/s	:	Mr. Kumar Sunil, Adv.

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

ORAL ORDER

3 09-09-2024 Heard learned counsel for the petitioner, learned
counsel for the informant and learned APP for the State.

2. The petitioner has preferred this application for grant of regular bail in connection with Mohania P.S. Case No. 63 of 2019 dated 07.02.2019 registered for the offences punishable under Sections 406, 420 and 379 of the Indian Penal Code and under Section 138 of Negotiable Instrument Act.

3. As per the prosecution case, it is alleged that the petitioner entered into an agreement with the informant to hire a proclain machine for a monthly rent of Rs. 2,00,000/-. Thereafter, the petitioner paid the agreed rent but



subsequently, the petitioner did not pay the same. Instead of paying the rent, the petitioner issued a cheque for Rs. 32,00,000/- to the informant. However, the cheque was dishonoured by the bank. After the cheque was bounced, the informant sent a legal notice to the petitioner demanding the due rent, but the petitioner refused to pay the same.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. It is further submitted that an agreement was executed between the parties dated 21.09.2017 is being annexed as at Annexure-2 of the bail petition, in view of the aforesaid agreement, the petitioner is ready to give remaining Rs. 7,50,000/- to the informant, subject to the condition of executing Sale Deed with respect to the proclaim machine in question by the informant to the petitioner. It is further submitted that from perusal of the cheque dishonoured report of the bank, it clearly reveals that the cheque was dishonoured on 07.05.2018, but the informant didn't sent legal notice to the informant within the stipulated period of 30 days. It is statutory rule that the notice of cheque bounce must be sent within 30 days of the date of cheque bounce and after 15 days the complaint must be filed, but the same was not followed. It



clearly appears that the instant case has been lodged after applying legal mind just to extort and grab the money of the petitioner. Learned counsel for the petitioner has further submitted that there is no compliance of Section 138 of the N.I. Act inasmuch as no notice in view of Section 138 of the N.I. Act was sent by the informant to the petitioner within stipulated period. It is further submitted that the case relates to the civil dispute. The petitioner has two criminal antecedents which relates to similar nature as stated in para 3 of the bail petition. The petitioner is in custody since 25.06.2024. Learned Counsel has relied on the judgment of Hon'ble Patna High Court in the case of **Praveen Kumar vs. The State of Bihar (Cr. Misc. No. 25231 of 2011)**, the Hon'ble High Court has held that "It is very much clear that the N.I. Act is a Special Act and provided a special mode in the case of bouncing of cheque. Earlier such provision was not available but later on having felt the necessity this was brought in the statute by way of amendment. On perusal of Section 142 of the N.I. Act it is clear that it starts with non-obstante clause which says that notwithstanding anything contained in the Code of Criminal Procedure, no court shall take cognizance of any offence punishable under Section 138 except upon a complaint in



writing made by the payee or as the case may be, the holder in due course of the Cheque. So, it itself shows that Section 142 has overriding effect on the general law i.e. Code of Criminal Procedure. It is well settled principle of law that when a statute provides particular mode for the act to be done then that act can only be done through that mode alone provided under the statute and not in any other mode.

5. Learned A.P.P. for the State and learned counsel for the informant have opposed the bail petition of the petitioner.

6. Considering the aforesaid facts and circumstances of the case as well as the period of custody, the petitioner above-named, is directed to 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 learned A.C.J.M.-1st, Mohania, Kaimur in connection with Mohania P.S. Case No. 63 of 2019, with the condition:-

(i) The petitioner is directed to remain physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, the bail bonds of the petitioner are liable to be cancelled.



7. The application stands allowed.

(Chandra Prakash Singh, J)

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