

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.77328 of 2023

Arising Out of PS. Case No.-374 Year-2022 Thana- BUDDHACOLONY District- Patna

Atish Kumar S/O Late Laldhari Singh R/O Village- Amhara, P.S- Bihta,
Distt.- Patna, Bihar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Prince Kumar Mishra

For the Opposite Party/s : Mr.Yogendra Kumar

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

ORAL ORDER

3 16-01-2024 Learned counsel for the petitioner is permitted to remove the defect(s), as pointed out by the office, if any, within a period of three weeks from today.

2. Heard learned counsel for the petitioner and learned Additional Public Prosecutor for the State.

3. The petitioner is apprehending his arrest in connection with Buddha Colony P.S. Case No. 374/2022 dated 14.08.2022 registered for the offences punishable under Sections 409, 420, 504 and 506 of the Indian Penal Code and Section 138 of the N.I. Act.

4. As per the prosecution case, the informant is alleged to have given total Rs. 3 crore 20 lacs to the petitioner through different modes. The petitioner orally assured to give



30% interest per year. The petitioner gave only Rs. 58 lacs in the last four years. On 04.03.2022, the petitioner gave a cheque for 1 crore and 30 lacs but it was bounced due to insufficiency of funds.

5. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. The petitioner is accused in 6 other criminal cases and he is on bail in all the aforesaid cases as stated in para 3 of the bail petition. No offence u/s 420 of the I.P.C is made out against the petitioner as the petitioner has no intention to cheat right from the beginning. It is further submitted that the lodging of police case is completely barred u/s 142 of the N.I. Act. Learned counsel for the petitioner has relied on the judgment in **Praveen Kumar Vs. The State of Bihar in Cr. Misc. No. 25231 of 2011** in which it is stated that "*the mode that has been adopted for filing application under Section 138 is completely barred as Section 138 read with Section 142 of the N.I. Act provided the only mode for filing criminal case as complaint case. The lodging of Police Case is completely barred under Section 142 and says that no court shall take cognizance of offence punishable under Section 138 except upon a complaint.*"

6. Learned A.P.P. for the State has vehemently



opposed the prayer for anticipatory bail of the petitioner.

7. Considering the aforesaid facts and circumstances of the case as well as finding substance in the contention of learned counsel for the petitioner, let the above named petitioner, in the event of his arrest/surrender within a period of six weeks from today, be enlarged on anticipatory bail on furnishing bail-bond of Rs. 20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of the learned court concerned, Patna in connection with Buddha Colony P.S. Case No. 374/2022 subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

8. The application stands allowed.

(Chandra Prakash Singh, J)

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