

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.81638 of 2023

Arising Out of PS. Case No.-759 Year-2022 Thana- GOPALGANJ TOWN District-
Gopalganj

=====

Rajesh Sharma @ Rajesh Kumar Sharma Son Of Late Dudhnath Sharma R/O
Village- Chapiya, P.S. And Dist.- Gopalganj

... .. Petitioner/s

Versus

1. The State Of Bihar
2. Nirmala Devi Wife Late Shyamlal Prasad R/O Nirmala Complex, Chandra
Gokhul Road, P.O. And P.S. And Dist.- Gopalganj

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr.Dhramveer, Advocate
For the Opposite Party/s : Mr.Raj Kishor Singh, APP
For the Informant : Mr. Shashwat Srivastava, Advocate

=====

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER

4 21-03-2024 Heard learned counsel for the petitioner as well as

learned counsel appearing on behalf of the informant and

learned APP for the State.

2. In the present case, the petitioner is
apprehending his arrest in connection with Gopalganj Town P.S.
Case No. 759 of 2022, registered on 16.09.2022 for the offences
under Sections 406, 420 of the Indian Penal Code and Section
138 of N.I. Act.

3. As per prosecution case, the petitioner was
tenant of the informant and towards the rent of shop/premises let
out to the petitioner and amount of Rs.7,66,000/- became due.



Thereafter, certain cheques were issued by the petitioner which were dishonoured for want of sufficient funds.

4. Learned counsel for the petitioner submits that the petitioner is innocent and has falsely been implicated in this case. The petitioner issued four cheques of total due amount of Rs.7,66,000/-. However, after dishonour of the cheque as alleged, the petitioner has made payment of total amount of Rs.7,66,000/- vide number of transactions. The petitioner paid Rs. 6,02,060/- before institution of the FIR and paid Rs.73,940/- after institution of the FIR. In these circumstances, no offence under Sections 406 & 420 of the IPC is made out against the petitioner. For offence under Section 138 of N.I. Act the FIR could not be instituted as only a complaint is maintainable. Learned counsel further submits that the petitioner has been given benefit of Section 41A of the Code of Criminal Procedure and as he has not misused the privilege, his bail should be continued in the light of decision of this Court reported in 1984 PLJR 247.

5. Learned APP as well as learned counsel appearing on behalf of the informant vehemently oppose the submission made on behalf of the petitioner. Learned counsel for the informant submits that no payment has been made



towards the amount mentioned in the FIR.

6. Having regard to the facts and circumstances and submissions made on behalf of the parties and considering the nature of dispute and submission made on behalf of the petitioner about payment, let the petitioner above named, in the event of his arrest or surrender before the court concerned within a period of eight weeks from today, be released on bail, on furnishing bail bonds of Rs.10,000/- (Rupees Ten Thousand Only) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Gopalganj/concerned court in connection with Gopalganj Town P.S. Case No. 759 of 2022, subject to the condition as laid down under Section 438(2) of the Code of Criminal Procedure and other following conditions :

- (i) One of the bailors will be a close relative of the petitioner.
- (ii) The petitioner will remain present on each and every date fixed by the court below, if so required by the learned trial court.

However, before accepting the bail bonds of the



petitioner, the learned court below will verify the fact whether the payment of Rs.5,66,000/- as mentioned in the FIR has been made to the informant or not and if it is found that the said amount has not been paid then his bail bonds will not be accepted.

(Arun Kumar Jha, J)

DKS/-

U		T	
---	--	---	--

