

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.4486 of 2024

Arising Out of PS. Case No.-2354 Year-2020 Thana- PATNA COMPLAINT CASE District-
Patna

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Ashish Kumar Son Of Shri Umesh Kumar Ashok Nagar, Road No-2, Ps-
Kankarbagh, Patna

... .. Petitioner/s

Versus

1. The State of Bihar
2. Hemant Kumar Son Of Late Ramchandra Prasad Flat No-303, Ganpati
Complex, Janak Kishor Road, Ps-Kadamkuan

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar, Advocate

For the Opposite Party/s : Mr. Rajendra Singh, APP

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

2 19-02-2024 Heard learned counsel for the petitioner, learned

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

Opposite Party No.2.

2. The petitioner apprehends his arrest in
connection with Complaint Case No. 2354 (C) of 2020,
registered for the offences punishable under Sections 406,
420 of the Indian Penal Code along with Section 138 of the
N.I. Act.

3. The learned counsel for the petitioner at the
outset submits that criminal case should not be used as a
tool for coercing the petitioner into submission for parting
with money which the petitioner does not owe. It is also



submitted that if what has been alleged by the complainant is true in that event, the complainant has remedy available in law of redeeming the amount through civil proceedings but then resorting to criminal proceedings for the purposes of recovery of money has been deprecated by the Hon'ble Supreme Court even. It is further submitted that even presuming what has been alleged is true without admitting in that event, the offence under Section 138 of the N.I. Act is bailable but then cognizance has been taken under Section 406 and 420 of the Indian Penal Code also which makes the offence non-bailable, when *prima facie* in the nature of allegation as alleged in the complaint, it would manifest that no offence under Section 406 and 420 of the Indian Penal Code is made out for the reason that from the perusal of Annexure – I to the anticipatory bail application it would manifest that the petitioner and the Opposite Party No. 2 were friends and the petitioner was doing business of manufacturing Jute bags for which he required certain money for expanding the business and the Opposite Party No. 2 being his friend, became ready to help him in lieu whereof the partnership deed was executed (Annexure – 1) in between the petitioner and Opposite Party No. 2 with



certain conditions. It is thus submitted that if the terms and conditions of the partnership deed has been breached whether it would entail a criminal prosecution or a civil proceeding. It is also submitted that no doubt in the partnership deed, it has been recorded that Opposite Party No. 2 shall be at liberty to recover the amount either through a civil proceeding or a criminal proceeding but then resorting to criminal proceeding when civil proceedings are available for redeeming the amount, it amply demonstrates that the complaint was instituted only with a view to use a criminal court as a tool for recovery of money and ornamental allegation under Sections 406 and 420 of the Indian Penal Code was levelled.

4. The learned counsel appearing on behalf of the Opposite Party No. 2 opposes the anticipatory bail application of the petitioner but then is not in a position to rebut the submission of the learned counsel for the petitioner that the petitioner and Opposite Party No. 2 had entered into a partnership deed dated 25.08.2019 with certain conditions and if the conditions have been breached then definitely no offence under Section 406 and 420 would be made out as it cannot be alleged that petitioner right from



the inception had any intention to cheat Opposite Party No. 2 or the amount which was given by Opposite Party No. 2 to the petitioner was by way of entrustment rather the said amount was invested in the business.

5. 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 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 Additional Chief Judicial Magistrate – XIII, Patna, where the case is pending/successor court in connection with Complaint Case No. 2354 (C) of 2020 subject to the conditions as laid down under Section 438 (2) of the Cr.P.C.

(Satyavrat Verma, J)

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