

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (SJ) No.1154 of 2025**

Arising Out of PS. Case No.-39 Year-2024 Thana- JAMALPUR District- Munger

Ashish Kumar @ Bittu S/o Late Bishnu Kant Sinha Resident Of Mohanpur,
Ward No 23, Ps- Jamalpur, Distt.- Munger

... .. Appellant/s

Versus

1. The State of Bihar Bihar
2. Indrajeet S/o Budha Ram R/o Badi Daulatpur Pasupalangali, P.S.- Jamalpur,
Distt.- Munger

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Shashi Dhar Jha
For the Respondent/s : Mr.Sadanand Paswan

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

ORAL ORDER

5 07-08-2025 Heard learned counsel for the appellant and

learned Special Public Prosecutor for the State. Notice to the

Respondent no. 2 has already been received by his cousin

brother despite that none appeared.

2. This is an appeal under Section 14(A)(2) of the

Scheduled Castes and Scheduled Tribes (Prevention of

Atrocities) Act, 1989 against the rejection of prayer for bail

vide order dated 25.02.2025 passed by the learned A.D.J.-1st

cum Special Judge, SC/ST (POA) Act, Munger in Jamalpur

P.S. Case No. 39 of 2024 dated 25.02.2024 registered for the

offence/s punishable u/ss 341, 323, 406, 420, 379, 506 read

with section 34 of the Indian Penal Code and 3(1)(r)(s) / 3(2)



(va) of the SC/ST (POA) Act.

3. As per the prosecution case, the allegation against the appellant is of not returning the debt amount of Rs. 6,50,000/-. it is further alleged that when the informant demanded his money, the appellant gave him two cheques of Rs. 50,000/- which got dishonored due to insufficient fund. It is further alleged that the appellant and the co-accused persons abused him by calling his caste name and they also assaulted him and snatched his golden chain worth Rs. 1 lakh.

4. Learned counsel for the appellant has submitted that the appellant has falsely been implicated in this case due to ulterior motive. Learned counsel has further submitted that the caste name was not disclosed by anyone at the time of the alleged occurrence. Learned counsel has submitted that the law is well settled that with respect to an offence under Section 138 of the N.I. Act, an F.I.R. cannot be instituted rather a complaint is maintainable in terms of Section 142 of the N.I. Act and for the said proposition he relied on the case of ***Hemant Kumar Das & Another Vs. The State of Bihar, reported in 2018(4) PLJR 725***. Learned Counsel has further 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. As per FIR, no member of public was present at the relevant point of time of the alleged incident hence no case is made out under SC/ST Act. It is further submitted that it is a case of civil dispute. Learned counsel for the petitioner placed reliance on the judgment in the case of **Bimla Tiwari Vs. State of Bihar and**



others (Special Leave Petition (CRL.) Nos. 834-835 of 2023)

at para 10, the Hon'ble Apex Court has held that "we would reiterate that the process of criminal law cannot be utilized for arm-twisting and money recovery, particularly while opposing the prayer for bail." The appellant has no criminal antecedent as stated in para 3 of the bail petition. The appellant is in custody since 26.12.2024.

5. Learned Spl. P.P. for the State has vehemently opposed the bail petition of the appellant.

6. In view of the aforesaid facts and circumstances of the case as well as finding substance in the contention of the learned counsel for the appellant, the impugned order dated 25.02.2025 passed by the learned A.D.J.-1st cum Special Judge, SC/ST (POA) Act, Munger in Jamalpur P.S. Case No. 39 of 2024, is set aside against the appellant. The criminal appeal is allowed.

7. Accordingly, the above named appellant, 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 the learned A.D.J.-1st cum Special Judge, SC/ST (POA) Act, Munger in Jamalpur P.S. Case No. 39 of 2024, with the condition/s:-



(i) The appellant 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 appellants are liable to be cancelled.

(Chandra Prakash Singh, J)

guddukr/-

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