

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64349 of 2024

Arising Out of PS. Case No.-2026 Year-2023 Thana- COMPLAINT CASE District- Banka

Amit Kumar Sah Son of Late Brahmdeo Sah R/O-Village -Bharko, Police
Station- Amarpur, District- Banka

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. Mithilesh Kumar Jha Son of Late Satyanarayan Jha R/O- Village- Bharko,
P.S.- Amarpur, Distt.- Banka

... .. Opposite Party/s

with

CRIMINAL MISCELLANEOUS No. 64677 of 2024

Arising Out of PS. Case No.-1964 Year-2023 Thana- COMPLAINT CASE District- Banka

Amit Kumar Sah S/o Late Brahmdeo Sah R/o Village- Bharko, Police Station-
Amarpur, District- Banka

... .. Petitioner/s

Versus

1. The State of Bihar
2. Mithilesh Kumar Jha S/o Late Satyanarayan Jha R/o vill - Bharko, P.S. -
Amarpur, Distt. - Banka

... .. Opposite Party/s

Appearance :

(In CRIMINAL MISCELLANEOUS No. 64349 of 2024)

For the Petitioner/s : Mr. Ajay Mukherjee, Advocate
Mr. Ganesh Sharma, Advocate

For the Opposite Party/s : Mr. Ram Anurag Singh, Advocate

(In CRIMINAL MISCELLANEOUS No. 64677 of 2024)

For the Petitioner/s : Mr. Ajay Mukherjee, Advocate

For the Opposite Party/s : Mr. Subodh Kumar, Advocate
Mr. Pranit Kumar, Advocate
Mr. Chandra Mohan Jha, Advocate

CORAM: HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL ORDER

7 07-05-2025 Heard learned Counsel for the petitioner and

learned Additional Public Prosecutor for the State. Both the

cases are being taken up together, as they are on behalf of the



same petitioner and the complainant and the matter is also related to the same subject.

2. Petitioner apprehends his arrest in connection with Complaint Case No. 2026 of 2023 registered for the offences punishable under Sections 406 and 420 of the Indian Penal Code and Section 138 of the N.I. Act.

3. The prosecution case is based upon a complaint filed by opposite party no. 2 that the petitioner was running a Kirana shop and had taken a loan on interest, in the year 2021 but subsequently, when the petitioner stopped giving the interest amount, then the complainant demanded to return the loan amount given to him. It has been alleged in the complaint that a total amount of Rs. 5,21,000/- remains due on the petitioner with regard to which he had given 17 blank cheques as security to the complainant which had ultimately bounced and hence, the present complaint under Section 406, 420, 138 of N.I. Act was instituted. It would however appear that the cognizance in the matter has been taken only under Section 138 of N.I Act and Section 406 of the I.P.C. and there is no cognizance under Section 420 of the Indian Penal Code.

4. Learned counsel for the petitioner submits that that the dispute is primarily civil in nature arising out of the



transactions between the petitioner and the complainant. It has been submitted on behalf of the petitioner that Annexure-2 which is an agreement between the parties would go to show that he had taken a loan of Rs. 1,25,000/- from the complainant/O.P. No.2 who used to give loan on interest and most of the amount has already been paid by the petitioner either in terms of money or in kind, which is sale of mustard oil demonstrated by Annexure-3 to the petition.

5. It has further been submitted by learned counsel for the petitioner that the petitioner is a businessman and the entire matter relates to an accounting dispute and the cheques that were given to the complainant/O.P. No. 2 were only as security for the loan as a guarantee of a business, which has been misused by the complainant, despite the fact that the petitioner has paid substantial amount of the loan that was taken by the complainant. It has also been submitted that due to this fact that no cognizance has been taken even upon the complaint under Section 420 of the I.P.C. as no dishonest intention to cheat appeared from the inception and so far as Section 138 N.I Act is concerned, the same is bailable in nature.

6. By an earlier order dated 24.04.2025, learned counsel for the Petitioner had offered that he would show his



bonafide by producing a draft of Rs. 75,000/- made in favor of O.P. No. 2, and the same has been produced today. However, learned counsel for O.P. No. 2 submits, on instructions of his client that, he is not ready to accept the said draft of Rs. 75,000/- as more loss has occurred to him. It has further been submitted that the contentions made in the complaint petition are absolutely true and as a matter of fact, the cheques to the tune of Rs. 5,21,000/- given by the petitioner have bounced with regard to which, he had given a legal notice to the petitioner to which he did not respond.

7. Out of 17 cheques in question, 16 were subject matter of Criminal Miscellaneous No. 64349 of 2024, while the other Criminal Miscellaneous No. 64677 of 2024 is concerned with only one cheque.

8. It has to be taken into consideration that in the present case, cognizance has been taken only under Section 406 of the I.P.C. and Section 138 of the N.I. Act, whereas there is no cognizance under Section 420 of the I.P.C., indicating thereby that there was no intention to cheat right from the inception. Taking the rival contention into consideration, it would appear that the matter predominantly relates to a civil dispute with regard to money transaction and hence, in such view of the case,



I am inclined to extend the privilege of anticipatory bail to the petitioner.

9. Considering the above facts and circumstances, let the petitioner, above named, in the event of his arrest or surrender before the Court below within four weeks, be released on bail on furnishing bail bond of Rs. 10,000/- (ten thousand) with two sureties of the like amount each to the satisfaction of learned Judicial Magistrate 1st Class, Banka/Court Concerned, Banka, in connection with Complaint Case No.2026 of 2023, subject to the condition laid down under Section 438 (2) of the Code of Criminal Procedure/Section 482 (2) of the B.N.S.S., 2023 and subject to the further condition that the petitioner shall co-operate in the investigation/trial.

(Soni Shrivastava, J)

sharun/-

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

