

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68635 of 2024

Arising Out of PS. Case No.-269 Year-2018 Thana- SAMASTIPUR District- Samastipur

Manoj Kumar Son of Late Om Prakash Resident of RZ-B71, Street No. 5, Raj
Nagar, Palam Colony New Delhi, P.S.- Palam, Village- District- New Delhi

... .. Petitioner/s

Versus

1. The State of Bihar Patna
2. Vinod Kumar Sinha S/o Late Mahesh Pd. Sinha R/o Ghose Lane, ward no.
17, P.S.- Town, Distt.- Samastipur

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Saroj Sharma

For the Opposite Party/s : Mr. Vinod Shanker Modi

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

ORAL ORDER

5 18-03-2025 Heard learned counsel for the petitioner and learned
A.P.P for the State.

2. The petitioner has preferred this application for grant of regular bail in connection with Samastipur (Town) P.S Case No. 269/2018 dated 05.11.2018 registered for the offence punishable u/ss 406, 420, 467, 468, 471 and 506 of the Indian Penal Code and Section 138 of the N.I. Act.

3. As per the prosecution case, the informant runs a business in the name of Maa Vaishnav Galla Bhandar at Samastipur and deals in supply of mustard oil and other edible oils. The petitioner is the Director of S.B.O. Exports Private Limited, New Delhi. Certain supply was made by the informant



to the Company for a sum of Rs.4,96,897/-. The petitioner, in his capacity as Director of the Company, had allegedly issued and delivered, at Samastipur, a cheque on 18.06.2018 in favour of the informant of the said amount of Rs.4,96,897/- for having delivered edible oils to the petitioner. The petitioner had requested the informant to present the cheque for encashment in July, 2018. Allegedly, when he presented the cheque, the same stood dishonoured because of insufficiency of fund in the account of the petitioner. There is statement made by the informant that on the petitioner's request, he had again deposited the cheque for encashment, which again stood dishonoured for the same reason. Requisite statutory notice was issued to the petitioner for payment of the amount in question. The petitioner, however, did not pay the amount which compelled the informant to lodge the F.I.R.

4. Learned counsel for the petitioner has submitted that the petitioner is innocent and has falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioner. 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. The petitioner has six antecedents as stated in para 3 of the bail petition. The petitioner is in custody



since 12.06.2024.

5. Learned A.P.P. for the State has vehemently opposed the bail petition of the petitioner.

6. Considering the aforesaid facts and circumstances of the case as well as the period of custody, the petitioner above-named, 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 learned Court concerned, Samastipur in connection with Samastipur (Town) P.S Case No. 269/2018, with the condition ;-

(i). The petitioner 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 bond of the petitioner is liable to be cancelled.

(ii). If the petitioner is found involved in similar nature of offence in the future, the prosecution will be at liberty to move for cancellation of his bail bonds.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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