

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.84705 of 2024

Arising Out of PS. Case No.-1194 Year-2022 Thana- SITAMARHI COMPLAINT CASE
District- Sitamarhi

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Ashwani Kumar Srivastava @ Ashwini Kunal Srivastave Son of Nawal Khishor Srivastave @ Nawal Kishore Prasad RESIDENT OF VILLAGE -BHAKURAHAR, WARD NO 18, PS- BARGANIYA DISTRICT -SITAMARHI

... .. Petitioner/s

Versus

1. The State of Bihar
2. Bagish Kumar Son of Late Sita Ram Muradpuri Village- Muradpur, Ps- Dumra, Dist- Sitamarhi, P/A- Main raod, In front of the Main Gate of Goenka college, Ps- Sitamarhi, Dist- Sitamarhi

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vikash Kumar Jha, Advocate
For the Opposite Party/s : Mr. Pushpa Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY
ORAL ORDER

2 21-02-2025 Heard the parties.

2. The petitioner is in custody in connection with Complaint Case No. C-1/1194 of 2022 for the offence under Section 406 of the I.P.C. and Section 138 of the N.I. Act lodged on 13.04.2023 by the informant, Bagish Kumar.

3. As per the prosecution story, the informant alleged that earlier he was having an electronic shop in his premises. As he was not in a mood to continue it further, the petitioner appeared and wanted the entire shop on rent alongwith the articles which was assessed as Rs. 6,00,000/- with monthly rental of Rs. 30,000/-. The allegation is that as the petitioner had the



intention to cheat, he chose to look the other way and as such, the FIR.

4. Learned counsel for the petitioner submits that all the allegation that is there relates to verbal understanding between them in which though he accepts the rent amount, the allegation that the shop was let out along with materials is rejected. The complainant only to exaggerate has included the additional amount of Rs. 6,00,000/- by way of presence of the materials in the shop. In any case, having sent notice, when the Negotiable Instrument Act has been attracted, he deserves bail.

5. The last submission is that though cheque/signature belongs to him, it was never intended for the amount that was incorporated rather as a guarantee paper for the shop which was let out to him for which the same was handed over to him.

6. Learned counsel for the complainant on the other hand opposes the prayer submitting that the intention to cheat was always there with the petitioner and as such, the cognizance has been taken under Section 406 of the Indian Penal Code also. He further submits that the materials that were present in the shop coupled with the rental amount. These were part of the verbal discussion but while the petitioner accepts the rent amount pursuant to verbal agreement, he denies the part that the shop has been given to him with the materials. This clearly shows criminal



breach of trust and in that background, the Court has taken cognizance under Section 406 of the IPC and 138 of the N.I. Act and he, for the present, does not deserves bail.

7. Having heard the parties and perusing the record, this Court finds force in the submission of learned APP. It is surprising that while the verbal agreement of rent amount is accepted by the petitioner, he denies the other part of the story which relates to the shop having been given to him with the materials. This prima facie shows criminal breach of trust on his part which forms the basis for taking cognizance under Section 406 of the I.P.C. and 138 of the N.I. Act. It is not the case of the petitioner that upon misuse of cheque by the complainant as he tried to make out a different story, the petitioner made any complaint/lodged FIR before an appropriate authority/Police Station.

8. In that background, for the present, this Court is not inclined to extend him privilege of bail which is accordingly rejected.

(Rajiv Roy, J)

Adnan/-

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