# IN THE HIGH COURT OF JUDICATURE AT PATNA
**CRIMINAL MISCELLANEOUS No.74697 of 2026**

**CNR No. BRHC011016722026**

Arising Out of PS. Case No.-958 Year-2024 Thana- GAYA COMPLAINT CASE District-Gaya

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Kundan Kumar Gupta @ Kundan Kumar son of Pradeep Kumar Resident of Village-Kapasiya Police Station-Paraiya, District-Gaya

... ... Petitioner/s

Versus

1. The State of Bihar
2. Ambika Prasad Son of Indradeo Saw Resident of Village - Gurudwara Road, Ps- Kotwali, Dist- Gaya

... ... Opposite Party/s

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**Appearance :**
For the Petitioner/s : Mr.Mrigendra Pratap Singh, Adv
For the Opposite Party/s : Mr. Chandra Bhushan Prasad, APP

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**CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA**

ORAL ORDER

2 04-11-2026 **1.** Heard learned senior counsel for the petitioner and learned A.P.P. for the State, Sri Chandra Bhushan Prasad.

**2.** The learned A.P.P. Sri Chandra Bhushan Prasad, at the outset, submits that petitioner is seeking anticipatory bail in Complaint Case No.958 of 2024, in which cognizance has been taken under Section 138 of the NI Act read with Section 420 of the IPC. It is next submitted that after cognizance is taken, summons are issued and if petitioner based on summons appears before the learned Trial Court, the petitioner will not be arrested rather will join the proceedings before the learned Trial Court and for the said submission relies on an order of the Hon’ble

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Supreme Court in ***S.L.A. (Criminal) No. 16221 of 2025 (Om Prakash Chhawnika @ Om Prakash Chabnika @ Om Prakash Chawnika vs. the State of Jharkhand and another)*** disposed of by an order dated 23.04.2026 and relies on Paras-8, 9 and 10 of the said order.

**3.** The learned senior counsel appearing on behalf of the petitioner submits that from perusal of the allegation as alleged in the complaint, it would manifest that a purely civil dispute has been given a criminal colour as the complainant alleges that petitioner had taken Rs. 15 lakhs for purchasing a poclain machine, but then the amount was not returned and in lieu whereof, a cheque was issued, but the same on presentation for encashment bounced. It is also submitted that offence under Section 138 NI Act is a bailable offence and in the nature of allegation *prima facie* no offence under Section 420 IPC is made out, but then is not in a position to rebut the submission of the learned APP that since summons have been issued, the petitioner ought to have appeared before the learned trial court and joined the proceedings.

**4.** On query of the Court that as to whether non-bailable warrant of arrest against the petitioner has been issued or not, on which the learned senior counsel appearing on behalf

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of the petitioner fairly submits that non-bailable warrant of arrest has not been issued against the petitioner.

**5.** The learned senior counsel appearing on behalf of the petitioner next submits that in the State of Bihar, the learned Magistrates, in mechanical manner on appearance, remand the accused to judicial custody without appreciating the facts of the case and law in its correct perspective. It is further submitted that this Hon'ble Court, in some cases, had disposed of the anticipatory bail application with liberty to the petitioner to appear before the learned Trial Court on the ground that non-bailable warrant of arrest has not been issued and the learned Trial Court was directed to act strictly in accordance with the order of the Hon'ble Supreme Court as recorded hereinabove, but then in some of the cases, the learned Magistrate in mechanical manner remanded the accused in judicial custody, on which the learned APP, Sri Chandra Bhushan Prasad, submits that if what is being submitted by the learned senior counsel appearing on behalf of the petitioner is a correct fact, in that event, consequences would follow, if the learned Magistrate is not adhering to the direction of the Hon'ble Supreme Court and this Court.

**6.** After hearing the learned counsel for the parties,

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the Court was inclined to extend the privilege of anticipatory bail to the petitioner, but since it has been submitted by the learned senior counsel appearing on behalf of the petitioner that till date non-bailable warrant of arrest against the petitioner has not been issued, hence the anticipatory bail application is disposed of with liberty to the petitioner to appear before the learned Trial Court on or before 4.12.2026 with a copy of the order dated 23.04.2026 in S.L.A. (Criminal) No. 16221 of 2025 (Om Prakash Chhawnika @ Om Prakash Chabnika @ Om Prakash Chawnika vs. the State of Jharkhand and another) and the learned Trial Court is directed to proceed strictly in accordance with the orders of the Hon'ble Supreme Court.

**7.** The anticipatory bail application is disposed of.

**(Satyavrat Verma, J)**

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