

Schedule -XLII-High Court (J) 9a Old (M) 164

Sl. No.	Date of order of proceeding	Order with signature of the court	Office note taken with date
		In The Court of Shri Prakash Jha, A.J.C.VIII, Ranchi	
		<u>ABP No. 2513 of 2022</u> <u>CNR-JHRN01-011204-2022</u> Dharam Raj Petitioner. Versus The State of Jharkhand & Another O.Ps. Present :- Sri Saurabh Pandey, Id. Advocate for the accused-petitioner. Mr. Mohammad Asgar, Id. Advocate for the complainant. Sri Ved Prakash, Id. Addl. P.P. <u>ORDER</u> Apprehending his arrest, the accused-petitioner namely, Dharam Raj has filed the anticipatory bail petition for grant of privilege of anticipatory bail in connection with Complaint Case No. 2991/2021, registered u/ss 138 of the N.I. Act and u/s 420 of the IPC which is pending in the Id. Court of Sri D.N. Shukla, J.M.F.C. XXVIII, Ranchi. After holding inquiry vide order dated 12/07/2022 the Id. J.M.F.C. XXVIII, Ranchi has found that prima facie there is a sufficient ground for proceeding u/s 138 of the N.I. Act and u/s 420 of the IPC against the accused namely, Dharam Raj. Heard Id. counsel for the petitioner, Id. counsel for the complainant and Id. Addl. P.P. In a nutshell, the case of the complainant is that on 10/08/2020 while the complainant was at his residence situated at Ranchi, accused Dharam Raj came there and he demanded a sum of Rs. 7,20,000/- from him and in lieu thereof he agreed either to repay the loan amount with an additional amount of Rs. 1,50,000/- or to register Raiyati land or ancestral house of his share situated at Bokaro in his favour by November, 2020 and thereupon with effect from 14/08/2020 to 24/10/2020, the complainant paid a total sum of Rs. 7,20,000 to the accused-petitioner. On 18/11/2020 the accused-petitioner issued two cheques i.e. cheque no. 000019 dated 03/12/2020 for a sum of Rs. 5,20,000/- and cheque no. 000014 dated 28/12/2020 for Rs. 3,50,000/- in favour of complainant and	
	02/01/2023		
	Sd/-		

	Contd./P-2 02/01/2023 Sd/-	<u>ABP No. 2513 of 2022</u> when the said cheques were presented for encashment, the same were returned unpaid due to the reason of insufficient funds. The complainant issued demand notice to the accused but he failed to repay the cheque amount to the complainant. Hence, this case. Ld. counsel for the petitioner has submitted that in the instant case summoning order has been passed u/s 138 of the N.I. Act and u/s 420 of the IPC but the procedure of Special Act i.e. N.I. Act has been followed while recording the S.A. as well as inquiry evidence. He has further argued that the procedure as described in the Cr.P.C. for holding inquiry has not been followed for summoning the accused u/s 420 of the IPC. In Complaint Case No. 2991/2021 the complainant filed the affidavit which has been treated as his S.A. and similarly, the inquiry witness namely, Binod Kumar also filed affidavit and on that basis the summoning order has been passed. He has further argued that the complaint petition itself creates a doubt regarding involvement of section 420 of the IPC in the instant case. No case u/s 420 of the IPC is made out. The petitioner is innocent and has committed no offence rather he has falsely been implicated on the basis of conjecture and surmises. He never intended to defraud the complainant. Offence u/s 138 N.I. Act is bailable in nature. Mere inability to return the loan amount can not give rise to criminal prosecution for cheating. His custodial interrogation is not required in the facts and circumstances of the case. He has no criminal antecedent. It is a well settled principle of law that special law shall prevail over the general law. It is prayed that the petitioner may be admitted to anticipatory bail. Ld. counsel for the O.P. No. 1-complainant and ld. Addl. P.P. have opposed the prayer for anticipatory bail of the petitioner. Paragraph-2 of the Complaint Case No. 2991/2021 goes to show that the accused-petitioner agreed either to return the loan amount with an additional amount of Rs. 1,50,000/- or to register Raiti land or ancestral house of his share situated at Bokaro in favour of the complainant. But strangely, the details of Raiti land/house of the accused-petitioner has not been mentioned either in the complaint petition or in the S.A. of the complainant. Further the complaint goes to show that on different dates with effect from 14/08/2020 to 24/10/2020 the complainant paid a total sum of Rs. 7,20,000/- to the accused and on 18/11/2020 the accused-petitioner issued two cheques total amounting to Rs. 8,70,000/- in favour of the complainant. Meaning thereby he issued two	
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		<u>ABP No. 2513 of 2022</u> cheques in favour of complainant for repayment loan amount of Rs. 7,20,000/- as well as interest amount of Rs. 1,50,000/- total amounting to Rs. 8,70,000/-. Ld. Counsel for the petitioner has submitted that the case pertains to offence punishable u/s 138 of the N.I. Act only which is a bailable offence and no case is made out u/s 420 of the IPC in the facts and circumstances of the case. Having regard to the aforesaid facts and circumstances, I am inclined to grant the privilege of anticipatory bail to the petitioner named above and consequently, he is hereby ordered to be released on bail on his furnishing bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of Id. Court of Sri D.N. Shukla, J.M.F.C. XXVIII, Ranchi, in the event of his arrest or surrender within a period of three weeks from today, subject to the conditions as laid down u/s 438 (2) of the Cr.P.C. (Dictated) Sd/- (Prakash Jha) A.J.C.VIII, Ranchi	
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