

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.45956 of 2014

Arising Out of PS.Case No. -40 Year- 2014 Thana -PARSABAZAR District- PATNA

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Seema Singh

.... Petitioner/s

Versus

1. State of Bihar

2. Arun Kumar @ Upankar Pritam Kumar Santoshi

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shanti Kumar- Advocate

For the Opposite Party/s : Mr. Vijay Anand-Advocate

For the State : Mr. Brij Kishore Prasad-A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV JUDGMENT

Date: 15-04-2015

Petitioner/ complainant has filed instant petition for cancellation of bail granted by this Court vide order dated 20.08.2014 under Cr. Misc. No.24629 of 2014 to accused/ opposite party no.2 under guise of Section 439(2) of the Cr.P.C.

2. In order to supplement the ground, it has been submitted that accused/ O.P. no.2 succeeded in snatching the order after duping the Court by suppressing the relevant facts, figure as well as admission of the accused/ O.P.no.2 himself while filing prayer for anticipatory bail before the learned lower Court bearing bail petition no.17739 of 2014 (Annexure-2), admitting liability as per allegation levelled by the petitioner.

3. It has been submitted that during course of negotiations of sale of land in between the parties, petitioner/ complainant had paid altogether Rs.17,75,000/-, out of total agreed



consideration money Rs.20,51,000/- to the accused/ opposite party no.2 and then thereafter, accused/ opposite party no.2 executed sale deed, however, till today accused failed to handover possession of the land sold to the petitioner/ complainant and on account thereof, petitioner/ complainant found deceived of Rs.17,75,000/- the amount along with Rs.75,459/- the registration fee etc. totaling amount Rs.18,50,459/-.

4. It has also been pleaded that in the complaint petition, there happens to be specific disclosure that though there was payment of Rs.17,75,000/-, but in the sale deed the consideration amount was shown as Rs.8,66,000/-, the rate fixed by the government for the area concerned for the purpose of registration fee along with expenses of registration etc. appertaining to Rs.75,459/-.

5. It has also been submitted that while filing anticipatory bail petition before the learned Sessions Judge, accused/ opposite party no.2 had admitted his status, negotiation amongst the parties, settlement of consideration money over Rs.20,51,000/- as well as execution of deed of agreement after receipt of Rs.5,00,000/- on 04.05.2010. There also happens to be admission regarding execution of sale deed on 25.02.2011. Further referred Para-17 of the bail petition and submitted that after going through the same, it is evident that accused/ opposite party no.2

had admitted that out of Rs.20,51,000/- the agreed consideration amount, only three lacs remained due which the petitioner/ complainant undertook to pay within few days after registration and as the amount was not paid, the original sale deed remained with him that means to say, by such averment accused/ opposite party no.2 had admitted payment of Rs.17,51,000/- by the petitioner/ complainant.

6. While preferring Cr. Misc. No.24629 of 2014, the accused suppressed the aforesaid facts and further succeeded in convincing the Court and on account thereof, he has been directed to deposit Rs.9,41,459/- (Rs.8,66,000/- + Rs.75,459/-). So, submitted that bail granted in favour of accused/ opposite party no.2 Arun Kumar is fit to be cancelled.

7. On the other hand, the learned counsel representing the accused/ opposite party no.2 namely Arun Kumar @ Upankar Pritam Kumar Santoshi submitted that there happens to be no concealment of fact. It has further been submitted that actually consideration amount is the amount which happens to be incorporated in the sale deed and not the other amount. Complainant had herself incorporated in the complaint petition that consideration amount incorporated in the sale deed was Rs.8,66,000/- and so, the petitioner/ complainant cannot be allowed to raise such plea against the document apart from the fact that

there happens to be complete absence at the end of petitioner/ complainant over mode of payment to substantiate the same. Therefore, Court rightly passed the order directing the opposite party no.2 to deposit Rs.8,66,000/- plus Rs.75,459/-, registration fee comprising total amount of Rs.9,41,459/-.

8. It has also been submitted that Para-17 of the bail petition filed before the learned Sessions Judge (Annexure-2) had already been properly explained under Paras-14 to 19 as well as under Para-23 of counter-affidavit. Moreover, from advocate notice served upon the opposite party no.2 (Annexure-A) of counter affidavit, the contention of petitioner is falsified. Apart from this, it has also been pleaded that after going through the order impugned, it is apparent that there happens to be no concealment of the fact. Consequent thereupon, instant petition is fit to be rejected.

9. The learned Additional Public Prosecutor submitted that cancellation of bail should not be taken in a routine manner.

10. Grant/ refusal of bail as well as cancellation of bail lies on two different pedestals. Being an offence of cognizable, non-bailable in nature will give a reason for rejection. However, once the plea has been considered and allowed should not be dealt with in casual manner. The Hon'ble Apex Court had occasioned to deal with the same and even though there happens to be appearance of such kind of provisions under Section 437(5) of the Cr.P.C. as

well as Section 439(2) of the Cr.P.C., but its application has been directed to be effective only in case following conditions are fulfilled:-

(i) when the person on bail commits the very offence or other offence for which he is being tried or has been convicted, (ii) when it is found that the accused is tampering with investigation, (iii) when the accused is found tampering with evidence, (iv) when the accused is found absconding or having gone out of control of sureties, (v) when the accused is found indulged in terrorizing the witnesses as well as committing act of violence, (vi) when it is found that subsequent event make out a graver offence than that of wherein he was granted bail, (vii) when the Superior Court found that there was a wrong exercise of judicial discretion while granting bail, (viii) when the circumstances are proved exposing misuse of bail availed by the accused.

11. Now, coming to facts of the case, it is apparent from the complaint petition that there was negotiation for purchase of certain area of plot no.522 and 425 lying at village-Dariapur, Khaira Toli and the deal was finalized over Rs.20,51,000/-, out of which, it has been disclosed that Rs.17,75,000/- (shown as

Rs.1775/- in the order impugned on account of typographical error) had already been paid and further, disclosure of consideration money in the sale deed as Rs.8,66,000/-, because of the fact that petitioner/ complainant failed to have possession over the land, on account thereof, she found deceived resulting into filing of instant petition. From the order impugned, it is evident that no such kind of submission was advanced nor the Court perceived as the consideration amount which the registered document divulges and which happens to be legally acknowledgeable been perceived as the opposite party no.2 offered to pay back the same, such offer coupled with the period of detention ultimately commanded the order in his favour.

12. In ***Dr. Vinod Bhandari vs. State of M.P. reported in 2015(2) P.L.J.R. Page-121 (SC)*** it has been held:-

12. It is well settled that at pre-conviction stage, there is presumption of innocence. The object of keeping a person in custody is to ensure his availability to face the trial and to receive the sentence that may be passed. The detention is not supposed to be punitive or preventive. Seriousness of the allegation or the availability of material in support thereof are not the only considerations for declining bail. Delay in commencement and conclusion of trial



is a factor to be taken into account and the accused cannot be kept in custody for indefinite period if trial is not likely to be concluded within reasonable time. Reference may be made to decisions of this Court in Kalyan Chandra Sarkar vs. Rajesh Ranjan (2005)2 SCC 42[:2005(1) PLJR (SC) 439: 2005(2) JLJR (SC)15], State of U.P. vs. Amarmani Tripathi(2005)8 SCC 21, State of Kerala vs. Raneef (2011)1 SCC 784 and Sanjay Chandra vs. CBI(2012)1 SCC 40[:2012(1) PLJR (SC)264: 2012(1) JLJR (SC)13].

13. Now, coming to Para-17 of the bail petition filed before the learned lower Court (Annexure-2) inconsonance with the Annexure (A) of counter affidavit, it found full of wreathe and on account thereof, is found out of cogitation for the present purpose.

14. Accordingly, instant petition is found de void of merit and is rejected.

(Aditya Kumar Trivedi, J)

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