

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Revision No.214 of 2014

Arising Out of PS.Case No. -null Year- null Thana -null District- NAWADA

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Rajendra Prasad Son of Late Sukar Prasad Resident of Village-Dulam Bigha, P.S.-
Narhat, District-Nawada, at present posted as Head Master, Kishan High School,
Andharwari, P.S.-Rajauli, District-Nawada

.... Petitioner

Versus

The State of Bihar

.... Respondent

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Appearance :

For the Petitioner/s : Mr. Rajeev Nayan, Advocate

For the Respondent/s : Mr. Mukesh Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 06-08-2015

This application is directed against the order dated 07.02.2014 passed by the learned Sessions Judge, Nawada in Cr. Misc. No. 60 of 2013 arising out of Rajauli P.S. Case No. 120 of 2013 by which the learned Sessions Judge, Nawada has allowed the petition filed by the opposite party before the District Magistrate, Nawada under the provision of Section 439(2) of the Code of Criminal Procedure (For short 'the Code') and cancelled the bail of the petitioner granted by the learned Chief Judicial Magistrate, Nawada.

2. The prosecution case is based on a written report



submitted by the Circle Officer, Rajauli vide letter No. 360 dated 06.06.2013 before the Officer-in-charge, Rajauli, Nawada alleging, inter alia, that the petitioner Rajendra Prasad, In-charge Headmaster of Kisan High School, Andharwari defalcated Rs. 100000/- (one lakh), which ought to have been paid to the retired Assistant Teacher of the school, namely, Ganaur Mahto.

3. On the basis of the said allegation, Rajauli P.S. Case No. 120 of 2013 dated 07.06.2013 was registered under Sections 419 and 420 of the Indian Penal Code and investigation was taken up.

4. In course of investigation, the petitioner surrendered in the court of learned Chief Judicial Magistrate, Nawada and prayed for bail. After hearing the parties and taking into consideration the materials on record, the learned Chief Judicial Magistrate, Nawada granted bail to the petitioner vide order dated 12.06.2013. By the said order dated 12.06.2013, the learned Chief Judicial Magistrate not only called for an explanation from the informant of the case regarding the reason for institution of FIR but also directed the District Magistrate, Nawada to conduct an inquiry into the matter and submit a report.

5. Thereafter, the District Magistrate, Nawada filed an application under Section 439(2) of the Code vide Cr. Misc.



Petition No. 60 of 2013 before the learned Sessions Judge, Nawada seeking cancellation of bail granted to the petitioner. After hearing the parties, the learned Sessions Judge, Nawada vide order dated 07.02.2014 cancelled the bail granted to the petitioner by the learned Chief Judicial Magistrate, Nawada vide order dated 12.06.2013. The aforesaid order dated 07.02.2014 is under challenge before this Court in the present application filed under Sections 397 and 401 of the Code.

6. It would be evident from the impugned order passed by the learned Sessions Judge, Nawada that while cancelling the bail granted to the petitioner by the learned Chief Judicial Magistrate, he has taken into consideration the merit of the case and came to a conclusion that the petitioner was guilty of defalcation of government money amounting to Rs. 100000/- (one lakh).

7. Learned counsel for the petitioner has submitted that the impugned order passed by the learned Sessions Judge, Nawada is bad in law as also on facts of the case. The petitioner was Incharge Headmaster of a Government school. He is a law abiding citizen and the moment he came to know regarding a criminal case having been instituted against him, he voluntarily surrendered before the learned Chief Judicial Magistrate and prayed for bail.



The Learned Chief Judicial Magistrate considered the allegations made in the FIR and after recording the submissions made by learned counsel for the petitioner, granted him bail on merits. He has further submitted that the petitioner never misused his privilege of bail. He contends that the learned Chief Judicial Magistrate did not exceed his jurisdiction by granting bail in a case instituted under Sections 419 and 420 of the IPC. He further submits that there was neither any suppression of fact nor any concealment of material on the part of the petitioner before the learned Chief Judicial Magistrate when his application for bail was being considered.

8. On the other hand, learned counsel for the State has submitted that the order impugned passed by the learned Sessions Judge does not require any interference by this Court. The allegations are quite serious in nature and the learned Chief Judicial Magistrate has failed to appreciate the allegations made in the FIR and erroneously granted bail to the petitioner.

9. I have heard respective counsel for the parties.

10. Admittedly, the FIR has been instituted under Sections 419 and 420 of the Indian Penal Code. The learned Chief Judicial Magistrate was competent to grant bail under Section 437 of the Code in such matters. The FIR, in original, was before the

Court when the petitioner surrendered and prayed for bail. Hence, there is no question of suppression of any material from the Court.

11. It is well settled that there must be very cogent and overwhelming circumstances for an order seeking cancellation of bail. Rejection of bail when applied for is something different from cancellation of bail already granted to an accused. This is because cancellation of bail interferes with the liberty already secured by the accused. The grounds for cancellation of bail, broadly are:- (i) the accused misuses his liberty by indulging in similar criminal activity, (ii) interferes with the course of investigation, (iii) attempts to tamper with evidence or witnesses, (iv) threatens witnesses or indulges in similar activities which would hamper smooth investigation, (v) there is likelihood of his fleeing to another country, (vi) attempts to make himself scarce by going underground or becoming unavailable to the investigating agency, (vii) attempts to place himself beyond the reach of his surety etc.

12. In **Dolat Ram and Others vs. State of Haryana [(1995) 1 SCC 349]**, the Supreme Court considered the distinction between the rejection of bail at the initial stage and the cancellation of bail already granted earlier by the Court. It observed as under:-

“4. Rejection of bail in a non-bailable case at the initial stage and the cancellation of bail so granted, have to be considered and dealt with on different



basis. Very cogent and overwhelming circumstances are necessary for an order directing the cancellation of the bail, already granted. Generally speaking, the grounds for cancellation of bail, broadly (illustrative and not exhaustive) are: interference or attempt to interfere with the due course of administration of justice or evasion or attempt to evade the due course of justice or abuse of the concession granted to the accused in any manner. The satisfaction of the court, on the basis of material placed on the record of the possibility of the accused absconding is yet another reason justifying the cancellation of bail. However, bail once granted should not be cancelled in a mechanical manner without considering whether any supervening circumstances have rendered it no longer conducive to a fair trial to allow the accused to retain his freedom by enjoying the concession of bail during the trial. These principles, it appears, were lost sight of by the High Court when it decided to cancel the bail, already granted. The High Court it appears to us overlooked the distinction of the factors relevant for rejecting bail in a non-bailable case in the first instance and the cancellation of bail already granted.”

13. In the instant case, there is no allegation that after being released on bail, the petitioner misused his liberty or interfered or attempted to interfere in due course of administration of justice or evaded or attempted to evade the due course of justice.

There is no allegation that there is likelihood of the petitioner fleeing away to another country or he is attempting to hide himself by going underground or becoming unavailable. There is also no allegation of having committed similar offence while on bail.

14. The petitioner admittedly is a government servant and he is still in service. He has got roots in the society and there is no likelihood that he will abscond or tamper with the evidence. In such background of facts, I am of the opinion that there was no occasion for the learned Sessions Judge, Nawada to cancel the bail already granted to the petitioner in exercise of powers conferred under Section 439 (2) of the Code.

15. Accordingly, the impugned order dated 07.02.2014 passed by the learned Sessions Judge, Nawada in Cr. Misc. No. 60 of 2013 arising out of Rajauli P.S. Case No. 120 of 2013 is hereby set aside.

16. The application stands allowed.

(Ashwani Kumar Singh, J.)

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