

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.29397 of 2015

Arising Out of PS.Case No. -266 Year- 2012 Thana -DHANARUA District- PATNA

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Shravan Kumar, S/o Late Jawahar Yadav, Resident of Village Nijamat,
Police Station Dhanarua in the District of Patna.

.... Petitioner/s

Versus

1. The State of Bihar.
2. Rohan Yadav, S/o Late Baleshwar Yadav, Resident of Village Nijamat,
Police Station Dhanarua in the district of Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sunil Kumar, Adv.
Mr.Susant Kumar, Adv.

For the Opposite Party no.1 : Mr. Umanath Mishra, APP

For the C.B.I. : Mr.Sanjay Kumar, SC, CBI

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA PRASAD VERMA
ORAL ORDER

9 16-11-2016

It is well known that purity and transparency in the judicial proceedings are the hallmark of the judiciary. In the present proceeding, filed under Section 439(2) Cr.P.C., there is serious allegation of using forged documents as also concealment of the material facts in a judicial proceeding by the opposite party no.2 before this Court for obtaining an order of bail from this Court, which could not have been the handy work of opposite party no.2 alone, but he succeeded in getting the bail order with help of a gang of his accomplices/criminals.

The informant of Dhanarua P.S. Case No.266 of 2012 dated 12.08.2012 registered for the offences under Sections 341, 323, 504, 385, 307, 302/34 of the Indian Penal Code and Section 27 of the Arms Act, giving rise to Session Trial No.658 of 2013, has filed the present application for cancellation of bail of the accused opposite party no.2 Rohan Yadav on the ground that for the purposes of grant of bail he has used forged FIR and has concealed the material facts about approaching this Court twice

earlier. By an order dated 14.10.2015, a show cause notice was issued to the opposite party no.2 in the present matter.

The learned Addl. P.P. appearing on behalf of the State of Bihar was also directed to seek instructions and file a counter affidavit. A show cause on behalf of the opposite party no.2 was, in fact, filed, but, when the matter was taken up on 04.05.2016, none had appeared on his behalf. A counter affidavit was also filed on behalf of the State of Bihar, but the factum of manipulation in the FIR by the opposite party no.2 as also the factum of concealment of the material facts were not properly answered. However, when the matter was taken up for consideration on 10.08.2016, the relevant records were produced before this Bench. After hearing the learned counsel for the petitioner, the learned Addl.P.P. appearing on behalf of the State of Bihar and the learned counsel appearing on behalf of the opposite party no.2, the bail bonds of the opposite party no.2 was finally cancelled by this Bench by an order dated 10.08.2016. The Senior Superintendent of Police, Patna and other concerned police officers were directed to make all efforts to take the opposite party no.2 into custody at the earliest, but, in view of the nature of gravity of allegation particularly regarding using of forged documents in the judicial proceedings and concealment of material facts by the accused opposite party no.2, the learned counsel appearing on behalf of the petitioner was directed to serve a copy of the present petition upon the learned Standing Counsel for the C.B.I., so that an appropriate further order is passed for investigating the issue of forgery and concealment of the material facts by the opposite party no.2 with the help of a group/gang of persons. This Court was/is also of the opinion that some sort of

racket is going on somewhere; therefore, this requires deeper investigation by the C.B.I. For better appreciation, the entire order dated 10.08.2016 is reproduced herein below:-

“Heard Mr. Sunil Kumar, the learned counsel appearing on behalf of the petitioner, Mr. Umanath Mishra, the learned Addl. P.P. appearing on behalf of the State of Bihar and Mr. Rakesh Kumar Sinha, the learned counsel, who has filed power on behalf of the opposite party no.2.

The petitioner, who happens to be the informant of Dhanarua P.S. Case No.266 of 2012 dated 12.08.2012 registered for the offences under Sections 341, 323, 504, 385, 307, 302/34 of the Indian Penal Code as also under Section 27 of the Arms Act, has filed the present application under Section 439(2) of the Code of Criminal Procedure, 1973 for cancellation of bail of the accused opposite party no.2 Rohan Yadav.

The learned counsel appearing on behalf of the petitioner submits that the opposite party no.2 is alleged to be the main assailant in the FIR vide Annexure-1 lodged by the present petitioner for murder of his father- Jawahar Yadav. In the FIR, the opposite party no.2 is alleged to have fired from his country made rifle, which hit his deceased father as a result of which he died on the spot. It is further submitted that the opposite party no.2 filed his bail application vide Cr.Misc.No.11232 of 2015 wherein the whole FIR has been manipulated and some part of it has been forged/fabricated, in order to change the whole prosecution case. It is contended that in the aforesaid bail petition filed on behalf of the opposite party no.2 forged copy of the FIR was annexed as Annexure-1, wherein it has wrongly been shown that on the order of co-accused Baleshwar Yadav, one co-accused Upendra Yadav fired from his country made rifle, as a result of which the father of the present petitioner died. He next submitted that the opposite party no.2 had moved earlier twice for grant of bail, but even that fact was concealed in the bail petition filed by the opposite party no.2. In support of his above contentions, he has referred to the orders passed by the two different Benches of this Court, as contained in Annexure-2 and 3 respectively. On these

grounds, the submission is that the bail granted to the opposite party no.2 is fit to be cancelled by this Court.

In the present case, by an order dated 14.10.2015, notice was issued to the opposite party no.2 to show cause as to why bail granted to him by an order dated 25.05.2015 passed in Cr.Misc.No.11232 of 2015 be not cancelled. In response to the aforesaid notice, the opposite party no.2 has entered appearance through his counsel namely, Mr. Rakesh Kumar Sinha, who has filed a show cause on behalf of the opposite party no.2. However, the issues raised in the present proceeding regarding forging the FIR for the purposes of obtaining bail for the opposite party no.2 has not been answered in the show cause filed on behalf of the opposite party no.2, though it has been admitted in paragraph nos. 3 and 6 of the show cause that opposite party no.2 had moved earlier before this Court, but his prayer for bail was rejected on first occasion by an order dated 08.05.2014 passed in Cr.Misc.No.9500 of 2014 by a Bench of this Court (Coram: Rajendra Kumar Mishra, J.), but on second occasion it was dismissed for default by an order dated 03.03.2015 passed in Cr.Misc.44391 of 2014 by a Bench of this Court (Coram: I.A. Ansari, J., as His Lordship then was, presently Hon'ble the Chief Justice).

In the present case, a counter affidavit has also been filed on behalf of the respondent State, but the factum of manipulation in the FIR by the opposite party no.2 as also the factum of concealment of material facts have not been answered in the counter affidavit filed on behalf of the State of Bihar.

Fortunately, the original record of Cr.Misc.No.11232 of 2015 is available before this Court. After examination of the FIR annexed with the present petition as Annexure-1 and the FIR vide Annexure-1 annexed with the bail petition filed on behalf of the opposite party no.2, it is evident that in the FIR annexed along with bail petition filed on behalf of the opposite party no.2 there has not only been manipulation in the FIR, but the page containing fardbeyan of the informant is a forged and fabricated document changing the prosecution story about the petitioner being the main assailant. Furthermore, the factum that the petitioner moved earlier for grant of

bail, which was rejected by a Bench of this Court, has also been concealed in the bail petition filed on behalf of the opposite party no.2, rather a false statement has been made in paragraph no.2 that the petitioner has not moved earlier before this Court either for grant of anticipatory bail or regular bail in the present case.

For the reasons recorded above, this Court is of the considered opinion that it is not only a fit case where privilege of bail granted to the opposite party no.2 should be cancelled, but the matter requires deeper examination, if necessary, by the CBI. This Court is also of the opinion that this is not simply a handy work of opposite party no.2, rather several other persons seem to be involved in the forgery committed by the opposite party no.2 for filing the aforesaid bail petition. There appears to be some sort of racket going on somewhere.

In above view of the matter, the bail bonds of the opposite party no.2 in connection with Session Trial No.658 of 2013, arising out of Dhanarua P.S. Case No.266 of 2012 pending in the court of learned Additional Sessions Judge-X, Patna is hereby cancelled. The Senior Superintendent of Police, Patna and the other concerned police officers are hereby directed to make all efforts to take the opposite party no.2 into custody at the earliest and produce him before the learned trial court for remanding him to judicial custody.

Mr. Umanath Mishra, the learned Addl.P.P. shall communicate this order to the Senior Superintendent of Police, Patna forthwith, who shall file a compliance report within a period of two weeks.

List this matter under the same heading at the top of the list on 24th August, 2016.

In the meantime, the learned counsel appearing on behalf of the petitioner shall serve a copy of the present application by tomorrow upon Mr. Bipin Kumar Sinha, the learned Standing Counsel for the C.B.I., who shall appear in the present case on the next date fixed, when appropriate further order shall be passed.

Mr. Rakesh Kumar Sinha, the learned counsel appearing on behalf of the opposite party no.2 shall also remain present on the next date fixed.”



In the light of aforesaid order dated 10.08.2016, the learned Standing Counsel, C.B.I. appeared on the next date fixed i.e. on 24.08.2016 and fairly submitted that for the interpolation and forgery committed with respect to the Court's proceedings several R.C. Cases have been instituted and are pending under investigation by the C.B.I. He next submitted that, if this Court directs, the C.B.I. will have no objection in taking up the investigation with respect to the forgery committed or interpolation made in the Court's records with respect to instant criminal case, but he prayed for an adjournment of two weeks enabling him to obtain complete instructions from the competent authorities of the C.B.I. and file an appropriate affidavit. In view of the aforesaid submissions made by the learned Standing Counsel, C.B.I. the matter was adjourned. For better appreciation, the order dated 24.08.2016 is also reproduced herein below:-

“Heard the parties.

By an order dated 10.08.2016, the bail bonds of the opposite party no.2 in connection with Session Trial No.658 of 2013 arising out of Dhanarua P.S. Case No.266 of 2012 pending in the court of learned Additional Sessions Judge-X, Patna was cancelled and a direction was issued to the Senior Superintendent of Police, Patna and the other concerned police officers to make all efforts to take opposite party no.2 into custody at the earliest and produce him before the learned trial court for remanding him to judicial custody.

The learned counsel appearing on behalf of the petitioner was also directed by the aforesaid order dated 10.08.2016 to serve a copy of the present application upon the learned Standing Counsel for C.B.I., who, in turn, was directed to remain present before this Court on the next date fixed.

In compliance of the aforesaid order, Mr. Umanath Mishra, the learned Addl.P.P., has filed an affidavit on behalf of the Senior Superintendent of Police, Patna duly sworn by the S.D.P.O.,

Masaurhi, wherein it has been stated that in the light of the aforesaid order of this Court raids were conducted by the police for apprehending the opposite party no.2, but, despite all efforts, the opposite party no.2 could not be apprehended till date.

Mr. Sanjay Kumar, the learned Standing Counsel for C.B.I., is present before this Court and has submitted that for the interpolation and forgery committed with respect to the Court's records/documents, several R.C. Cases have been instituted and are pending under investigation by the C.B.I. He next submitted that, if this Court directs, the C.B.I. will have no objection in taking up the investigation with respect to the forgery committed or interpolation made in the Court's records with respect to instant criminal case, but for that he prays for an adjournment of two weeks enabling him to obtain complete instructions from the competent authorities of the C.B.I.

In view of the aforesaid submissions, the present matter is adjourned and is ordered to be listed on 14th September, 2016 under the same heading retaining its position.

Mr. Sanjay Kumar, the learned Standing Counsel for C.B.I., in the meanwhile, shall obtain necessary instructions and shall file an appropriate affidavit with respect to the issues involved in the present proceeding and the order passed on 10.08.2016 and today.

Mr. Umanath Mishra, the learned Addl.P.P., appearing on behalf of the State of Bihar, shall also file a fresh affidavit showing further efforts made by the police for apprehending the opposite party no.2 and, in fact, all efforts shall be made to take him into custody."

In response to the orders passed by this Court, Mr. Umanath Mishra, the learned Addl.P.P. appearing on behalf of the State of Bihar has filed affidavits on behalf of the Senior Superintendent of Police, Patna. In the last affidavit filed by him on 09.11.2016, it has been stated that due to regular raids

conducted by the police the accused opposite party no.2 Rohan Yadav has surrendered on 20.09.2016 before the learned trial court and he has been remanded to the judicial custody.

The learned counsel appearing on behalf of the petitioner-informant does not dispute the aforesaid assertions made by the learned Addl.P.P.

In above view of the matter, so far the petitioner is concerned, he has succeeded, but the question remains as to whether the forgery committed in the judicial proceedings by the opposite party no.2 with the help of a group of persons should be allowed to go scot-free or they should be brought to justice by entrusting the matter to the C.B.I. for making deeper investigation in the entire issues and for taking all consequential legal action.

Mr. Sanjay Kumar, the learned Standing Counsel, C.B.I. in compliance of the previous orders has filed a counter affidavit today on behalf of the Special Crime Branch, C.B.I., Patna. He submits that, if this Court directs, the C.B.I. will have no difficulty in undertaking the investigation of this matter, but the Special Crime Branch, C.B.I., Patna is greatly understaffed. Only five I.Os are in the Branch. According to him, with the aforesaid meager re-sources, the C.B.I. is required to exercise jurisdiction in the State of Bihar as also Jharkhand and it has already been entrusted several important matters for investigation.

The learned counsel appearing on behalf of the petitioner, at this stage, submits that in the identical matters with respect to the forgery committed in the judicial proceedings, a Co-ordinate Bench of this Court has already entrusted the C.B.I. to investigate the matter by an order dated 05.07.2016 passed in Cr.Misc.No.22924 of 2016 and Cr.Misc.No.26178 of 2016.

According to him, in the light of the aforesaid order, the matter is under investigation before the C.B.I. The aforesaid order dated 05.07.2016 passed by a Co-ordinate Bench of this Court has been reported in 2016 (3) PLJR 621.

The assertions made by the learned counsel appearing on behalf of the petitioner are not being disputed by the learned Standing Counsel, C.B.I., rather he has fairly conceded that the matter is under investigation before the C.B.I.

The learned Addl. P.P. appearing on behalf of the State of Bihar also submits that, in view of the gravity of the nature of the allegation in the present case about the forgery committed by the opposite party no.2 with the help of gang of people, the matter requires deeper investigation by the C.B.I., since it would have wider ramification in many judicial proceedings.

It is true that the learned Standing Counsel, C.B.I. has highlighted the difficulty of understaffing of the C.B.I., Patna, but that only cannot be a valid ground for not taking the investigation of such a serious matter of having wider ramification. The competent authority of S.C.B., C.B.I., Patna would be well advised to approach the higher authorities of the C.B.I. or the State government for providing adequate hands for taking up all such investigations of serious nature. It is expected that, if such request is made, then the same shall be considered favourably by the appropriate authorities for providing adequate numbers of staff to the Special Crime Branch, C.B.I., Patna.

As recorded above, the purity and transparency in the judicial proceedings are the hallmark of the judiciary. The Hon'ble Apex Court has repeatedly held in several judicial proceedings

that it is the duty of the Court to take appropriate steps so that no one can derive undue benefit or advantage by abusing the process of law.

Taking into consideration the aforesaid circumstances and factual matrices of the present case, this Court directs the Registrar General of this Court to lodge a FIR before the Central Bureau of Investigation, Patna without any unnecessary delay. The C.B.I., Patna is directed to investigate the case and whosoever is found involved with respect to commission of crime of forgery committed in the judicial proceedings should be brought to the justice. The Registrar General of this Court is also directed to hand-over the authenticated photocopy of the whole petition of Cr.Misc.No.11232 of 2015 as also the authenticated photocopy of the records of Cr.Misc.No.9500 of 2014 and Cr.Misc.No.44931 of 2014.

It is further directed that while conducting the investigation of the present matter, if the officers of the C.B.I., Patna make a request for supply of any other relevant documents or make a request for any other appropriate assistance, then such request shall be considered in accordance with law and appropriate assistance, permissible under the law, shall be provided to the C.B.I., Patna.

The present application stands finally disposed of with the observations and directions made above.

Arvind/-

(Birendra Prasad Verma, J)

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